

APPENDIX A

ADDITIONAL STATE AND COUNTY DATA

1. State of Hawaii Affordable Housing Inventory.....135

This inventory was compiled by the Hawaii Housing Finance and Development Corporation (2015a). The table lists the State of Hawaii's affordable housing projects owned by private, non-profit, or governmental entities that were developed with funding or support from Federal, State or County resources. The first column of the table denotes whether the project is designated for the elderly, families, people with special needs, or agricultural workers. The table is available at: <http://dbedt.hawaii.gov/hhfdc/files/2015/11/Affordable-Housing-Inventory-August-2015.pdf>

2. Multifamily Inventory of Units for the Elderly and Persons with Disabilities in Hawaii145

The US Department of Housing and Urban Development, Office of Housing (2010), maintains this inventory to assist prospective applicants with locating units in HUD insured and HUD subsidized multifamily properties that serve the elderly and/or persons with disabilities. Although this table was produced in 2010, the listing of properties appears to still be mostly accurate. The table is available at: http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_13058.pdf

STATE OF HAWAII

Affordable Housing Inventory

This list represents an inventory of the State of Hawaii's affordable housing projects. The list includes affordable housing projects owned by private, non-profit or governmental entities, developed with funding or support from federal, state or county resources.

For information on homeless services agencies and homeless shelters, please visit the Hawaii Public Housing Authority's website at www.hcdch.hawaii.gov.
For information on community housing facilities serving persons with disabilities, please call the State Dept of Health's **Adult Mental Health Division at 453-6926**.

Type	Project	Address	City	Island	Managing Agent	Telephone	Units
E	Ainakea Senior Residences	53-3996 Ainakea Dr.	Kapaau	Hawaii	Hawaii Affordable Properties	(808)322-3422 x24	30
E	Capt Cook Elderly Hsg Project	82-1040 Kiloa Road	Captain Cook	Hawaii	Day-Lum Rentals	(808)935-4152	21
F	E Komo Mai	816 Kinooole St.	Hilo	Hawaii	Big Island Housing Foundation	(808)969-3327	45
E	Haili Elderly	227 Haili Street	Hilo	Hawaii	Cambridge Management Inc.	(808)961-3273	36
E(PH)	Hale Aloha O Puna	Keaau District	Keaau	Hawaii	Hawaii Public Housing Authority	(808)832-5960	30
E(PH)	Hale Hauoli	45-540 Kaniaka Place	Honokaa	Hawaii	Hawaii Public Housing Authority	(808)832-5960	40
F	Hale Hoaloha	119 W. Lanikaula Street	Hilo	Hawaii	Cambridge Management, Inc.	(808)935-9101	81
E(PH)	Hale Hookipa	81-1038 Nani Kupuna Place	Kealahou	Hawaii	Hawaii Public Housing Authority	(808)832-5960	32
E(PH)	Hale Olaloa	144 Kamana Street	Hilo	Hawaii	Hawaii Public Housing Authority	(808)832-5960	50
F	Hale Ulu Hoi III (FKA Laukapu Apts)	485 Laukapu St.	Hilo	Hawaii	Day-Lum Rentals	(808)935-4152	18
E	Harry & Jeanette Weinberg Kea'au Elderly	16-184 Pili Mua Street	Keaau	Hawaii	Big Island Housing Foundation	(808)969-3327	20
F	Hilo Maille Terrace	40 Maille Street	Hilo	Hawaii	Day-Lum Rentals	(808)935-4152	24
F	Hilo Val Hala Apartments	120 Puueo Street	Hilo	Hawaii	Cirrus AMI	(808)961-3545	103
E	Hualalai Elderly	75-256 Hualalai Road	Kailua-Kona	Hawaii	Hawaii Affordable Properties	(808)331-2221	30
E	Hualalai Elderly Ph 2	75-258 Hualalai Road	Kailua-Kona	Hawaii	Hawaii Affordable Properties	(808)331-2221	36
E	Hualalai Elderly Ph 3	75-260 Hualalai Road	Kailua-Kona	Hawaii	Hawaii Affordable Properties	(808)331-2221	30
F	Jack Hall Kona	74-895 Kealahou Street	Kailua-Kona	Hawaii	Bob Tanaka, Inc.	(808)326-1204	48
F(PH)	Ka Hale Kahaluu	78-6725 Makolea Street	Kailua-Kona	Hawaii	Hawaii Public Housing Authority	(808)832-5960	50
F(PH)	Kaimalino	74-5060 Kealahou Street	Kailua-Kona	Hawaii	Hawaii Public Housing Authority	(808)832-5960	40
F	Kamaaina Hale	78-5837 Kuakini Highway	Kailua-Kona	Hawaii	Hawaii Affordable Properties, Inc.	(808)322-3422	126
E	Kamana Elderly	145 Kamana Street	Hilo	Hawaii	Big Island Housing Foundation	(808)969-3327	62
E	Kamuela Senior Housing	64-270 Keaka Kea Place	Kamuela	Hawaii	Hawaii Affordable Properties	(808)887-0243	31
F(PH)	Kauhale O'Hanakahi	19 Pamala Street	Hilo	Hawaii	Hawaii Public Housing Authority	(808)832-5960	20
F	Kauhale Olu I, II, and III	28-2926 Kumula Street	Pepeekeo	Hawaii	AWI Management Co.	(808)961-5015	124
F	Ke Kumu Ekahi (Ke Kumu at Waikoloa)	68-3520 Ke Kumu Place	Waikoloa	Hawaii	Hawaii Affordable Properties	(808)322-3422	48
F(PH)	Ke Kumu Ekolu	68-3385 Ke Kumu Place	Waikoloa	Hawaii	Hawaii Public Housing Authority	(808)832-5960	20
F(PH)	Ke Kumu Elua	68-3367 Ke Kumu Place	Waikoloa	Hawaii	Hawaii Public Housing Authority	(808)832-5960	26
F(PH)	Kealahou	74-991 Manawale'a Street	Kailua-Kona	Hawaii	Hawaii Public Housing Authority	(808)832-5960	48
E	Kinoole Senior Residences	2020 Kinoole Street	Hilo	Hawaii	Hawaii Affordable Properties	(808)322-3422	30
E	Kulaimano Elderly Hsg Proj	28-2947 Kumula Street	Pepeekeo	Hawaii	County of Hawaii	(808)961-8379	50
F	Lailani	74-984 Manawale'a Street	Kailua-Kona	Hawaii	Hawaii Affordable Properties, Inc.	(808)327-4997	200
F	Lanakila Homes I	600 Waioala Street	Hilo	Hawaii	Hawaii Public Housing Authority	(808)933-0474	78
F	Lanakila Homes II	600 Waioala Street	Hilo	Hawaii	Hawaii Public Housing Authority	(808)933-0474	44
F	Lanakila Homes III	600 Waioala Street	Hilo	Hawaii	Hawaii Public Housing Authority	(808)933-0474	20
F	Lanakila Homes IV	600 Waioala Street	Hilo	Hawaii	Hawaii Public Housing Authority	(808)933-0474	48
F	Lincoln Courtside	400 Kinoole Street	Hilo	Hawaii	Seawind Realty	(808)935-5031	36

KEY:
E-Elderly F-Family F(PH)-Public Housing E(PH)-Elderly Public Housing SN-Special Needs Housing LH(AG)-Labor Housing, Agricultural Workers M-Market Priced Units

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Affordable Housing Inventory

Type	Project	Address	City	Island	Managing Agent	Telephone	Units
F(PH)	Lokahi	Lokahi Circle	Hilo	Hawaii	Hawaii Public Housing Authority	(808)832-5960	30
F	Lokahi Ka'u	73-4411 Kakahiaka St.	Kailua	Hawaii	Indigo Real Estate Svcs., Inc.	(808)769-4929	306
E	Mohouli Heights Sr. Neighborhood Phase 1	555 Kupuna Pl.	Hilo	Hawaii	Hawaii Affordable Properties, Inc.	(808)322-3422	60
F	Na Kahua Hale O Ulu Wini	Hina Lani Street	Kailua	Hawaii	Hope Services Hawaii	(808)935-3050	40
LH(AG)	Nani O Puna	15-2914 Kauhale Street	Pahoa	Hawaii	Hawaii Affordable Properties	(808)322-3422	32
E(PH)	Nani Olu	81-1011 Nani Kupuna Place	Kealahou	Hawaii	Hawaii Public Housing Authority	(808)832-5960	32
F(PH)	Noelani I	65-1191 Opelo Road	Kamuela	Hawaii	Hawaii Public Housing Authority	(808)832-5960	19
F(PH)	Noelani II	65-1191 Opelo Road	Kamuela	Hawaii	Hawaii Public Housing Authority	(808)832-5960	24
F	Ouli Ekahi	62-2600 Ouli Ekahi Pl	Kamuela	Hawaii	Hawaii Affordable Properties	(808)322-3422	33
E(PH)	Pahala	96-1169 Kou Street	Pahala	Hawaii	Hawaii Public Housing Authority	(808)832-5960	24
E	Pahala Elderly	96-1183 Holey Street	Pahala	Hawaii	Bob Tanaka, Inc.	(808)969-3327	8
E(PH)	Pomaikai Homes	929 Ululani Street	Hilo	Hawaii	Hawaii Public Housing Authority	(808)832-5960	20
F(PH)	Punahele Homes	Lokahi Place	Hilo	Hawaii	Hawaii Public Housing Authority	(808)832-5960	30
F	Riverside Apartments	333 Ohai St.	Hilo	Hawaii	Big Island Housing Foundation	(808)969-3327	74
F	Waikoloa Gardens	68-1820 Puu Melia Street	Waikoloa	Hawaii	Bob Tanaka Realty	(808)949-4111	24
E	Waimea Elderly Hsg Proj	67-5165 Kamamalu St	Kamuela	Hawaii	Big Island Housing Foundation	(808)969-3327	40
F(PH)	Elele Homes	Ahe Street	Elele	Kauai	Hawaii Public Housing Authority	(808)832-5960	24
E(PH)	Hale Hoolulu	4264 Ala Muku Place	Kilauea	Kauai	Hawaii Public Housing Authority	(808)832-5960	12
E(PH)	Hale Hoonanea	4401 Waialo Road	Elele	Kauai	Hawaii Public Housing Authority	(808)832-5960	40
E	Hale Kupuna	2363 Puu Rd.	Kalaheo	Kauai	Hawaii Affordable Properties	(808)332-5110	28
E(PH)	Hale Nana Kai O Kea	4850 Kawaihau Road	Kapaa	Kauai	Hawaii Public Housing Authority	(808)832-5960	38
E(PH)	Home Nani	Moana & Laau Road	Waimea	Kauai	Hawaii Public Housing Authority	(808)832-5960	14
F(PH)	Hui O Hanamaulu	Laukono Street	Hanamaulu	Kauai	Hawaii Public Housing Authority	(808)832-5960	46
F(PH)	Kalaheo	Puu Road	Kalaheo	Kauai	Hawaii Public Housing Authority	(808)832-5960	8
F	Kalepa Village, Phase 1	4535 Kalepa Circle	Hanamaulu	Kauai	Hawaii Affordable Properties, Inc.	(808)246-4481	60
F	Kalepa Village, Phase 2 B	4535 Kalepa Circle	Hanamaulu	Kauai	Hawaii Affordable Properties, Inc.	(808)246-4481	40
F	Kalepa Village, Phase 3	4535 Kalepa Circle	Hanamaulu	Kauai	Hawaii Affordable Properties, Inc.	(808)246-4481	40
F	Kalepa Village, Phase 4	4535 Kalepa Circle	Hanamaulu	Kauai	Hawaii Affordable Properties, Inc.	(808)246-4481	40
F(PH)	Kapaa	4726 Malu Road	Kapaa	Kauai	Hawaii Public Housing Authority	(808)832-5960	36
F(PH)	Kawailehua-Federal	5230 Paanau Road	Koloa	Kauai	Hawaii Public Housing Authority	(808)832-5960	25
F(PH)	Kawailehua-State	5220 Paanau Road	Koloa	Kauai	Hawaii Public Housing Authority	(808)832-5960	26
F(PH)	Kekaha Ha'ae	8238 Iwipolena Road	Kekaha	Kauai	Hawaii Public Housing Authority	(808)832-5960	78
E	Kekaha Plantation Elderly Hsg	8215 1 Elepaio Road	Kekaha	Kauai	EAH	(808)337-9900	36
F	Koloa Hale Ohana Apartments	3985 Oluolu Road	Koloa	Kauai	AWI Management Corp.	(808)742-9440	48
F	Koloa Hale Ohana II	3985 Oluolu Road	Koloa	Kauai	AWI Management Corp.	(808)742-9440	18
F	Kolopua	5-4280 Kuhio Highway	Princeville	Kauai	EAH, Inc.	(808)523-8826	44
F	Lihue Court	4160 Hoala St.	Lihue	Kauai	Mutual Housing Assn. of Hawaii	(808)245-5045	173
E	Lihue Gardens Elderly	3120 Jerves Street	Lihue	Kauai	Mark Development, Inc.	(808)456-7303	58

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Type	Project	Address	City	Island	Managing Agent	Telephone	Units
E	Lihue Theater	3-3194 Kuhio Hwy.	Lihue	Kauai	Hawaii Affordable Properties	(808)245-6699	20
F	Paanau Village	5200 Paanau Road	Koloa	Kauai	EAH, Inc.	(808)742-8655	60
F	Paanau Village II	5164 Paanau Road	Koloa	Kauai	Hawaii Affordable Properties, Inc.	(808)742-8655	50
E	Kaniko'o (fka Rice Camp Senior)	2940 Kalen St. & 4203 Malama St.	Lihue	Kauai	EAH, Inc.	(808)726-2888	60
F	Shinagawa Apartments	3320 Puni Road	Koloa	Kauai	Mark Development, Inc.	(808)735-9099	8
F	Courts at Lanai, The	1119 Lanai Avenue	Lanai City, Lanai	Mau	Castle & Cooke Resorts, LLC	(808)565-3975	48
F(PH)	David Malo Circle	Mill Street	Lahaina	Mau	Hawaii Public Housing Authority	(808)832-5960	18
F	Front Street Apartments	2001 Kenui Street	Lahaina	Mau	Marcus and Associates	(808)667-5032	142
E	Hale Kupuna O Lanai	1144 Ilima Avenue	Lanai City, Lanai	Mau	Hale Mahaolu, Inc.	(808)877-4150	24
E	Hale Mahaolu Akahi	300-P W. Wakea Ave	Kahului	Mau	Hale Mahaolu	(808)872-4100	111
E	Hale Mahaolu Eha	1057 Makawao Avenue	Makawao	Mau	Hale Mahaolu	(808)573-1647	40
E	Hale Mahaolu Ehiku, Ph. IA	64 Ehiku Loop	Kihei	Mau	Hale Mahaolu	(808)872-4100	34
E	Hale Mahaolu Ehiku, Ph. IB	56 Ehiku Street	Kihei	Mau	Hale Mahaolu	(808)872-4100	20
E	Hale Mahaolu Ehiku, Ph. II	94 & 105 Ehiku Loop	Kihei	Mau	Hale Mahaolu	(808)872-4100	59
E	Hale Mahaolu Ekolu	717 B Makaala Drive	Wailuku	Mau	Hale Mahaolu	(808)242-4377	42
E	Hale Mahaolu Elima	11 Mahaolu Street	Kahului	Mau	Hale Mahaolu	(808)893-0002	60
E	Hale Mahaolu Eono	810 Kelawe Street	Lahaina	Mau	Hale Mahaolu	(808)877-4114	30
E	Hale Mahaolu Eono 5	810 Kelawe Street	Lahaina	Mau	Hale Mahaolu	(808)872-4100	5
E	Hale Mahaolu-Elua	200-A Hina Avenue	Kahului	Mau	Hale Mahaolu	(808)872-4180	180
F	Hale Makana O Waiale (FKA Waiale Road Apts)	670 Waiale Road	Wailuku	Mau	MECC	(808)249-0700	200
F	Harry and Jeanette Weinberg Pono Center	62 North Market Street	Wailuku	Mau	Lokahi Pacific	(808)242-5761 x23	4
E	Home Pumehana	290 Kolapa Place	Kaunakakai, Molokai	Mau	Hale Mahaolu	(808)872-4100	85
F	Honokowai Kauhale	3500 Lwr Honoapiilani Hwy	Lahaina	Mau	Hawaii Affordable Properties Inc.	(808)322-3422	184
F	Imi Ikena Apartments	511 Imi Place	Wailuku	Mau	EAH, Inc.	(808)523-8826	28
F	Iwiole Hale	181 Lanai Avenue	Lanai City, Lanai	Mau	Lanai Company	(808)565-3975	39
F(PH)	Kahale Mua-Federal	P.O. Box 30	Maunaloa, Molokai	Mau	Hawaii Public Housing Authority	(808)832-5960	25
F(PH)	Kahale Mua-State	Maunaloa, Molokai	Maunaloa, Molokai	Mau	Hawaii Public Housing Authority	(808)832-5960	32
F(PH)	Kahekili Terrace	2015 Holowai Place	Wailuku	Mau	Hawaii Public Housing Authority	(808)832-5960	82
F(PH)	Kahekili Terrace (A & B)	2015 Holowai Place	Wailuku	Mau	Hawaii Public Housing Authority	(808)832-5960	82
F	Kahului Town Terrace	170 Ho'ohana St.	Kahului	Mau	EAH, Inc.	(808)871-8444	72
F	Komohana Apartments	120 Leoleo Street	Lahaina	Mau	Hale Mahaolu	(808)661-3771	20
F	Lahaina Honokowai Villa Apartments	3535 Lwr Honoapiilani Hwy	Lahaina	Mau	AWI Management Corp.	(808)669-0011	56
F	Lahaina Surf	1037C Wainee Street	Lahaina	Mau	Hale Mahaolu	(808)872-5100	112
E	Lokenani Hale	1889 Loke St.	Wailuku	Mau	Hale Mahaolu	(808)243-9242	62
F	Luana Gardens II	615 A W. Papa Avenue	Kahului	Mau	Hale Mahaolu	(808)877-4114	60
F	Luana Gardens III	711 S. Kam Avenue	Kahului	Mau	Hale Mahaolu	(808)877-4114	62

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Type	Project	Address	City	Island	Managing Agent	Telephone	Units
F(PH)	Makani Kai Hale	35 Koapaka Lane	Waiehu	Maui	Hawaii Public Housing Authority	(808)832-5960	25
F(PH)	Makani Kai Hale II	35 Koapaka Lane	Waiehu	Maui	Hawaii Public Housing Authority	(808)832-5960	4
F	Maunaloa Vistas	62 Hoalua Lane	Maunaloa, Molokai	Maui	Locations LLC	(808)552-2248	12
F	Na Hale O Wainee	15 Ipu'Aumakua Lane	Lahaina	Maui	Maui Economic Concerns of the Community	(808)662-0076	30
F	Nani Maunaloa	62 Hoalua Lane	Maunaloa, Molokai	Maui	Locations LLC	(808)552-2248	61
E(PH)	Piilani Homes	1028 Wainee Street	Lahaina	Maui	Hawaii Public Housing Authority	(808)832-5960	42
F	Uwapo Road Apartments (aka Brook Hollow)	141 Uwapo Road	Kihei	Maui	Marcus & Associates, Inc.	(808)839-7446	18
F	Weinberg Court (aka Lahaina Affordables)	615 Lwr Honoapiilani Hwy	Lahaina	Maui	Cirrus AMI	(808)419-6273	62
E	220 California	220 California Avenue	Wahiawa	Oahu	Locations LLC	(808)622-1745	42
F	Academy Gardens	1302 Victoria Street	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)521-9022	40
E	Ainahau Vista (FKA Tusitala Vista)	2428 Tusitala St.	Honolulu	Oahu	Locations LLC	(808)926-6700	107
LH(AG)	Aloun Off Farm Hsg.	104 Lakeview Circle	Wahiawa	Oahu	Mark Development, Inc.	(808)735-9099	12
E	Artesian Vista	1828 Young St.	Honolulu	Oahu	Locations LLC	(808)949-5936	54
F	Bachelor's Quarters	91-1216 Renton Road	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)539-9777	10
F	Banyan Street Manor	1122 Banyan Street	Honolulu	Oahu	Indigo Real Estate Services, Inc.	(808)843-0021	55
F	Birch Street Apartments	916-920 Birch / 919 Alder	Honolulu	Oahu	Locations LLC	(808)596-9390	53
F	Chinatown Gateway Plaza	1031 Nuuanu Avenue	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)524-3737	200
F	Chinatown Manor	175 North Hotel Street	Honolulu	Oahu	EAH, Inc.	(808)545-1996	91
F	Courtyards at Milliani Mauka, The	95-1015 Koolani Drive	Milliani	Oahu	Management Specialists, Co.	(808)626-9455	48
E	D. E. Thompson Village	91-1295 Renton Road	Ewa Beach	Oahu	Bob Tanaka Realty	(808)681-4960	84
E	Franciscan Vistas Ewa	41-1471 Miula St.	Ewa Beach	Oahu	Indigo Real Estate Svcs., Inc.	(808)681-4000	150
F	Halawa View Apartments	99-009 Kalaloa St.	Aiea	Oahu	Pacific Realty Group	(808)488-3613	121
F(PH)	Hale Lailima	1184 Waimano Home Rd	Pearl City	Oahu	Hawaii Public Housing Authority	(808)832-5960	36
F	Hale Makana O Nanakuli	89-201 Lepeka Ave.	Waianae	Oahu	Big Island Housing Foundation	(808)620-9037	48
E	Hale Mohalu	800 Third St.	Pearl City	Oahu	CBM Hawaii, Inc.	(808)456-0368	210
F	Hale Mohalu II Family Housing	785 Kamehameha Hwy	Pearl City	Oahu	Locations LLC	(808)456-9420	168
F	Hale Mohalu II Family III	787 Kamehameha Hwy.	Pearl City	Oahu	Locations LLC	(808)456-9420	84
F	Hale Mohalu II Family IV	787 Kamehameha Hwy.	Pearl City	Oahu	Locations LLC	(808)456-9420	84
E	Hale Mohalu II Senior	787 Kamehameha Hwy.	Pearl City	Oahu	Locations LLC	(808)456-9420	164
E	Hale O'Hauoli	950 Luehu Street	Pearl City	Oahu	Cambridge Management, Inc.	(808)455-4744	100
F	Hale Pauahi	155 N. Beretania Street	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)532-3535	396
E(PH)	Hale Po'ai	1001 N. School Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	206
F	Hale Uhiwai Nalu (FKA Building 34)	91-1078 Yorktown St.	Kalaeloa	Oahu	Cloudbreak Hawaii, LLC	(808)682-1949	70
F	Hale Uhiwai Nalu Addition	91-1078 Yorktown St.	Kapolei	Oahu	Cloudbreak Hawaii, LLC	(808)682-1949	50
F	Hale Wai Vista Phase I	86-084 Farrington Hwy.	Waianae	Oahu	Locations LLC	(808)696-8258	84
F	Hale Wai Vista, Ph 2	86-086 Farrington Highway	Waianae	Oahu	Locations LLC	(808)696-8258	132
E	Haleiwa Senior Citizens	66-477 Paalaa Road	Haleiwa	Oahu	Hawaiian Properties, Ltd.	(808)637-6455	60

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Type	Project	Address	City	Island	Managing Agent	Telephone	Units
F	Halekauwila Place	665 Halekauwila Street	Honolulu	Oahu	Indigo Real Estate Services, Inc.	(808)212-9738	204
E	Halia Hale	851 N. School Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	41
F	Harbor Village	901 River Street	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)528-2753	90
E	Harry & Jeanette Weinberg Nanaikeola Senior Apts.	87-122 Nanaikeola Street	Waianae	Oahu	EAH, Inc.	(808)668-4702	40
E	Harry & Jeanette Weinberg Philip St Elderly Hsg	1515 Philip Street	Honolulu	Oahu	Foundation Property Mgt Inc	(808)949-2555	34
F	Harry & Jeanette Weinberg Sea Winds Apts	85-295 Kaiokalani Place	Waianae	Oahu	Housing Solutions, Inc.	(808)222-5510	50
E	Harry & Jeanette Weinberg Senior Residence @ Maluhia (FKA Maluhia Elderly)	1111 Hala Dr.	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)842-1082	40
E	Harry & Jeanette Weinberg Silvercrest	520 Pine Avenue	Wahiawa	Oahu	The Salvation Army	(808)622-2785	80
F(PH)	Hauiki Homes	Meyers Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	46
E	Hausten Gardens	808 Hausten Street	Honolulu	Oahu	Bob Tanaka, Inc.	(808)947-3423	50
E	Honuakaha	545 Queen Street	Honolulu	Oahu	Management Specialists Co.	(808)522-7919	150
F(PH)	Hookipa Kahaluu	47-330 Ahuimanu Road	Kaneohe	Oahu	Hawaii Public Housing Authority	(808)832-5960	56
E(PH)	Ho'olulu	94-943 Kau'olu Place	Waipahu	Oahu	Hawaii Public Housing Authority	(808)832-5960	112
F	Jack Hall Waipahu	94-817 Kuhaulua Street	Waipahu	Oahu	Bob Tanaka, Inc.	(808)671-2244	144
F(PH)	Kaahumanu Homes	Alokele & Kaiwiula Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	152
E	Kahuku Elderly Hauoli Hale	56-154 Pu'uluaana Street	Kahuku	Oahu	EAH, Inc.	(808)293-1416	64
F(PH)	Kalakaua Homes	1545 Kalakaua Avenue	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	221
E	Kalakaua Vista	1620 & 1628 Kalakaua Ave.	Honolulu	Oahu	Locations LLC	(808)949-5936	81
F	Kalani Garden Apartments	95-081 Kipapa Drive	Mililani	Oahu	Ecumenical Assoc. for Housing	(808)623-9811	118
E(PH)	Kalaniihula	1220 Aala Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	151
F(PH)	Kalihi Valley Homes	2250 Kalena Drive	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	373
E	Kalanui Sr. Apts	6950 Hawaii Kai Dr.	Honolulu	Oahu	Real Estate Strategies, LLC	(808)284-1010	31
F	Kamakee Vista	1065 Kawaihae Street	Honolulu	Oahu	Hawaii Affordable Properties	(808)594-0121	225
E(PH)	Kamalu	94-941 Kau'olu Place	Waipahu	Oahu	Hawaii Public Housing Authority	(808)832-5960	109
F(PH)	Kamehameha Homes	1541 Haka Drive	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	221
F(PH)	Kaneohe Apartments	45-507 & 45-513 Pahia Road	Kaneohe	Oahu	Hawaii Public Housing Authority	(808)832-5960	24
E	Kaneohe Elderly	45-457 Meli Place	Kaneohe	Oahu	Cambridge Management, Inc.	(808)235-4399	44
F	Kanoa Apartments	846 Kanoa Street	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)539-9777	14
F	Kapolei Ho'olimalima	91-1117 Kaonimakanani St	Kapolei	Oahu	Mark Development, Inc.	(808)735-9099	71
E	Kapuna I Apartments	1015 N. School Street	Honolulu	Oahu	Sage Apt. Communities, Inc.	(808)845-2130	162
F	Kauhale Kakaako	860 Halekauwila Street	Honolulu	Oahu	Hawaii Affordable Properties	(808)589-1845	268
F(PH)	Kauhale Nani	310 North Cane Street	Wahiawa	Oahu	Hawaii Public Housing Authority	(808)832-5960	50
F(PH)	Kauhale O'hana	41-1260 Kalaniana'ole Hwy	Waimanalo	Oahu	Hawaii Public Housing Authority	(808)832-5960	25
F(PH)	Kau'ioalani	85-658 Farrington Highway	Waianae	Oahu	Hawaii Public Housing Authority	(808)832-5960	50
F	Kawahi Maluwai Apartments (fka Wilikina Apartments)	730 Wilikina Drive	Wahiawa	Oahu	Cambridge Management, Inc.	(808)622-6408	119

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Affordable Housing Inventory

Type	Project	Address	City	Island	Managing Agent	Telephone	Units
F	Kekaulike Courtyards	1016 Maunakea Street	Honolulu	Oahu	Mutual Hsg Assoc of Hawaii	(808)545-2993	75
F	Kekuilani Courts	91-1083 Kekuilani Lp.	Kapolei	Oahu	Hawaii Affordable Properties	(808)322-3422	80
F	Kekuilani Gardens	91-1045 Kekuilani Loop	Kapolei	Oahu	Realty Laua, LLC	(808)693-7022	56
E	Keola Hoomalu Elderly	85-259 Plantation Road	Waianae	Oahu	Urban Management Corp.	(808)524-2731	35
E	Keola Hoonanea	1465 Aala Street	Honolulu	Oahu	Hawaiiana Management Co., Ltd.	(808)533-4582	175
F	Kewalo Apartments	1407 Kewalo St.	Honolulu	Oahu	Pacific Realty Group	(808)531-3233	38
F	Kilohana Apartments	45-265 William Henry Rd	Kaneohe	Oahu	Qualpac Mgt Corporation	(808)235-1844	148
E	Kinau Vista	1150 Kinau St.	Honolulu	Oahu	Locations LLC	(808)521-7111	63
F(PH)	Koolau Village	45-1027 Kamau Place	Kaneohe	Oahu	Hawaii Public Housing Authority	(808)832-5960	80
F	Ko'olaa'ula Phase I	94-1119 Keahumoa Pkway.	Ewa Beach	Oahu	Mutual Hsg Assn of Hawaii	(808)550-3800	120
F	Ko'olaa'ula Phase II	91-1159 Keahumoa Pkway.	Ewa Beach	Oahu	Mutual Housing Assn. of Hawaii	(808)550-3800	188
F(PH)	Kuhio Homes	Ahonui Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	134
F	Kukui Gardens Makai	1305 Liliha Street	Honolulu	Oahu	EAH, Inc.	(808)532-0033	389
F	Kukui Tower fka Beretania North	35 N. Kukui Street	Honolulu	Oahu	Ecumenical Assoc. for Housing	(808)537-4935	380
E	Kulana Hale	1551 S. Beretania St.	Honolulu	Oahu	Fndn for Social Resources, Inc.	(808)983-1550	176
E	Kulana Hale at Kapolei	1020 Wakea St.	Kapolei	Oahu	EAH, Inc.	(808)744-8072	154
F	Kulana Nani	46-229 Kahuhipa Street	Kaneohe	Oahu	Ecumenical Assoc. for Housing	(808)247-0602	160
E	Kulanakauhale Maluhia O Na Kupuna (FKA Waimanalo Kupuna)	41-209 Ilauihole St	Waimanalo	Oahu	Locations LLC	(808)426-1400	83
SN	Kulaokahua	1311 Ward Avenue	Honolulu	Oahu	Housing Solutions, Inc.	(808)599-5759	30
F	Kulia' Ika' Nu'u (fka Kahikolu Ohana Hale o Waianae)	85-296 Ala Hema Street	Waianae	Oahu	United States Veterans Initiative	(808)697-7300	72
E(PH)	Kupuna Home O'Waialua	67-088 Goodale Avenue	Waialua	Oahu	Hawaii Public Housing Authority	(808)832-5960	40
E(PH)	La'iola	1 & 15 Ihoiho Place	Wahiawa	Oahu	Hawaii Public Housing Authority	(808)832-5960	108
F	Lanakila Gardens	833 School Street	Honolulu	Oahu	Bob Tanaka, Inc.	(808)949-4111	28
E	Lani Huli (Kailua Elderly)	25 Aulike Street	Kailua	Oahu	Bob Tanaka, Inc.	(808)263-0268	82
F(PH)	Maili I	Maliona Street	Maili	Oahu	Hawaii Public Housing Authority	(808)832-5960	20
F(PH)	Maili II	Keliikipi Street	Maili	Oahu	Hawaii Public Housing Authority	(808)832-5960	24
F	Makalapa Manor Apartments	99-120 Kohomua St	Aiea	Oahu	Hawaiian Properties, Ltd.	(808)487-7114	124
E(PH)	Makamae	21 S. Kuakini Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	124
F	Makana Hale	95-141 Kipapa Drive	Mililani	Oahu	Qualpac Management Corp	(808)623-3920	126
E(PH)	Makua Alii	1541 Kalakaua Avenue	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	211
E	Malulani Hale	114 N. Kuakini Street	Honolulu	Oahu	Urban Management Corp.	(808)537-1213	150
F	Manana Gardens	949 Luehu Street	Pearl City	Oahu	Locations LLC	(808)455-4225	72
E	Manoa Gardens	2790 Kahaloa Drive	Honolulu	Oahu	Locations LLC	(808)988-6330	80
F	Marin Tower	60 North Nimitz Hwy	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)528-4460	236
F	Maunakea Tower	1245 Maunakea Street	Honolulu	Oahu	Sandalwood Management, Inc.	(808)537-9905	380
F(PH)	Mayor Wright Homes	521 N. Kukui Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	364
E	Meheula Vista I	95-1080 Lehiwa Drive	Mililani	Oahu	Locations LLC	(808)832-5960	76
F	Mokuola Vista	94-333 Mokuola St.	Waipahu	Oahu	Locations LLC	(808)671-4075	70
E	Na Lei Hulu Kupuna	610 Cooke Street	Honolulu	Oahu	Mark Development, Inc.	(808)593-1009	76

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Type	Project	Address	City	Island	Managing Agent	Telephone	Units
SN	Nakolea	1020 Isenberg Street	Honolulu	Oahu	Housing Solutions, Inc.	(808)973-0050	75
F(PH)	Nanakuli Homes	Lualai Pl & Farrington Hwy	Nanakuli	Oahu	Hawaii Public Housing Authority	(808)832-5960	36
F	Oasis at Waipahu (Nova Sunset Villas)	94-207 Waipahu Street	Waipahu	Oahu	AMC, LLC	(808)671-2800	406
F	Old Vineyard Street	265 S. Vineyard Street	Honolulu	Oahu	Urban Management Corp	(808)524-9734	32
F	Palehua Terrace	92-1074 Palahia St.	Kapolei	Oahu	Management Specialists Co.	(808)672-8269	84
F	Palehua Terrace, Phase 2	Palahia St.	Kapolei	Oahu	Management Specialists Co.	(808)672-8269	64
F(PH)	Palolo Valley Homes	2107 Ahe Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	118
F	Palolo Valley Homes	2170 Ahe St.	Honolulu	Oahu	Mutual Hsg Assn of Hawaii	(808)733-8650	306
E(PH)	Paoakalani	1583 Kalakaua Avenue	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	151
E	Pauahi Elderly	167 N. Pauahi Street	Honolulu	Oahu	Foundation Property Mgmt, Inc.	(808)524-5844	48
F	Pauahi Hale	126 North Pauahi Street	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)537-2866	77
E	Piikoi Vista	1326 Piikoi Street	Honolulu	Oahu	Locations LLC	(808)585-8882	47
E	Pohulani Elderly	626 Coral Street	Honolulu	Oahu	Hawaii Affordable Properties	(808)589-1845	262
F(PH)	Puahala Homes I	Ahihi Place & Hala Drive	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	28
F(PH)	Puahala Homes II	Ahihi Place	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	20
F(PH)	Puahala Homes III	Ahihi Place	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	40
F(PH)	Puahala Homes IV	School St & Lanakila Ave	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	40
F	Pualani Manor	1216 Pua Lane	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)841-5657	63
E(PH)	Pumehana	1212 Kinau Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	139
E(PH)	Punchbowl Homes	730 Captain Cooke Avenue	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	156
F(PH)	Puuwai Momi	99-132 Kohomua Street	Aiea	Oahu	Hawaii Public Housing Authority	(808)832-5960	260
F	River Pauahi Apartments	1155 River Street	Honolulu	Oahu	United Horizon Realty, LLC	(808)538-1621	49
E	Royal Kinau	728 Kinau St.	Honolulu	Oahu	Locations LLC	(808)521-3678	84
F(PH)	Salt Lake	2907 Ala Ilima Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	28
E	Senior Residence at Iwilei	888 Iwilei Road	Honolulu	Oahu	Management Specialists Co.	(808)943-9318	160
E	Senior Residence at Kaneohe	45-705 Kamehameha Hwy.	Kaneohe	Oahu	Management Specialists Co.	(808)235-2898	30
E	Senior Residence at Kapolei	91-1034 Namahoe St.	Kapolei	Oahu	Management Specialists Co.	(808)647-2937	60
E	Senior Residence at Kapolei 2	91-1098 Namahoe St.	Kapolei	Oahu	Management Specialists Co.	(808)647-2937	20
F	Smith-Beretania Apartments	1170 Nuuanu Avenue	Honolulu	Oahu	Showe Builders, Inc.	(808)521-6486	164
F(PH)	Spencer House	1035 Spencer Street	Honolulu	Oahu	Hawaii Public Housing Authority	(808)832-5960	17
F	Towers at Kuhio Park fka Kuhio Park Terrace	1475 Linapuni Street	Honolulu	Oahu	Interstate Realty Mgmt Company	(808)983-1641	556
F	Villages at Moa'e Ku (FKA Ewa Villages Ph. I)	91-1655 Pahika St.	Ewa Beach	Oahu	EAH, Inc.	(808)681-3000	64
F	Villages at Moa'e Ku Ph. II (FKA Ewa Villages Ph. II)	91-1644 Pahika St.	Ewa Beach	Oahu	EAH, Inc.	(808)681-3000	76

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Type	Project	Address	City	Island	Managing Agent	Telephone	Units
F	Villages at Moa'e Ku Ph. III (FKA Ewa Villages Ph. III)	91-1290 Renton Rd. (temp)	Ewa Beach	Oahu	EAH, Inc.	(808)681-3000	52
F	Villas at Aeloa, The	91-1118 Namahoe Street	Kapolei	Oahu	Management Specialists Co.	(808)574-4245	71
F	Villas at Malu'ohai	91-1025 Kaiau Avenue	Kapolei	Oahu	Management Specialists Co.	(808)674-0601	72
F	Waena Apartments (Kukui Gardens Mauka)	1320 Aala Street	Honolulu	Oahu	Carmel Partners	(808)330-1295	468
F(PH)	Wahiawa Terrace	300 Palm Street	Wahiawa	Oahu	Hawaii Public Housing Authority	(808)832-5960	60
F	Waiaika	827 Waiaka Road	Honolulu	Oahu	PLI Property Management	(808)738-3101	8
F(PH)	Waimaha-Sunflower	85-186 McArthur Street	Waianae	Oahu	Hawaii Public Housing Authority	(808)832-5960	130
F	Waimanalo Apartments	41-545 Hihimanu Street	Waimanalo	Oahu	Cambridge Management, Inc.	(808)259-5649	79
F(PH)	Waimanalo Homes	Humuniki St & Humuna Pl	Waimanalo	Oahu	Hawaii Public Housing Authority	(808)832-5960	19
F(PH)	Waimanalo Homes II	Humuniki St & Humuna Pl	Waimanalo	Oahu	Hawaii Public Housing Authority	(808)832-5960	22
E	Waipahu Hall	94-1060 Waipahu Street	Waipahu	Oahu	Cambridge Management, Inc.	(808)671-3801	72
F(PH)	Waipahu I	94-111 Pupuole Street	Waipahu	Oahu	Hawaii Public Housing Authority	(808)832-5960	19
F(PH)	Waipahu II	94-132 Pupupuhi Street	Waipahu	Oahu	Hawaii Public Housing Authority	(808)832-5960	20
F	Waipahu Tower	94-337 Pupumomi St	Waipahu	Oahu	Hawaiian Properties, Ltd.	(808)671-0162	63
F	Weinberg Hale	2734 S King St.	Honolulu	Oahu	Housing Solutions, Inc.	(808)946-6953	59
E	West Loch Elderly Village	91-1472 Renton Road	Ewa	Oahu	EAH, Inc.	(808)681-0562	150
F	Westlake Apartments	3139 Ala Ilima Street	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)839-2027	96
E	Whitmore Circle Apartments	111 Circle Makai Street	Wahiawa	Oahu	Mark Development, Inc.	(808)621-4987	44
F	Wildier Vista (FKA Punahou Vista)	1566 Wildier Ave.	Honolulu	Oahu	Locations LLC	(808)947-4846	55
E	Wilikina Park Elderly	298 Wilikina Drive	Wahiawa	Oahu	Sandalwood Management, Inc.	(808)622-6125	64
F	Winston Hale	1055 River Street	Honolulu	Oahu	Hawaiian Properties, Ltd.	(808)531-3085	93
E	Wisteria Vista (FKA King St. Apts.)	1239 S. King St.	Honolulu	Oahu	Locations LLC	(808)597-8963	91
F	680 Ala Moana	680 Ala Moana Blvd.	Honolulu	Oahu	Cirrus AMI	(808)922-1052	54
SN	Ho'okahua		Wailua	Kauai	Mental Health Kokua	(808)737-2523	18
SN	Kauai Economic Opportunity		Kapaa	Kauai	Kauai Economic Opportunity, Inc.	(808)245-4077	5
SN	KEO Transitional Housing		Lihue	Kauai	Kauai Economic Opportunity, Inc.	(808)245-4077	8
SN	SHDC No. 7		Lihue	Kauai	Steadfast Housing Development Corporation	(808)599-6230	6
SN	Hale Kanaloa		Kahului	Maui	Hale Kanaloa Inc.	(808)242-5761	5
SN	Hale Kihei		Kihei	Maui	Hale Kihei Housing, Inc.	(808)879-6784	6
SN	Hale Lahaina		Lahaina	Maui	Hale Lahaina Handicapped Project Inc.	(808)242-5761	6
SN	Hale Lokahi Akahi		Wailuku	Maui	Hale Lokahi Akahi	(808)242-5761	21
SN	Hale o Mana'o Lana Hou		Wailuku	Maui	Lokahi Pacific	(808)242-5761	16
SN	Hale O Mana'o Lana Hou PH II		Wailuku	Maui	Lokahi Pacific	(808)242-5761	10
SN	Kaho'okamamalu		Wailuku	Maui	Lokahi Pacific	(808)242-5761	20
SN	Mana Ola Na Keanuenue		Kahului	Maui	The ARC of Maui	(808)242-5761	5
SN	Maui Kokua Housing		Kahului	Maui	Mental Health Kokua	(808)737-2523	6

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Type	Project	Address	City	Island	Managing Agent	Telephone	Units
SN	ARC of Hawaii Hsg. Proj. No. 11		Honolulu	Oahu	The ARC in Hawaii	(808)737-7995	23
SN	ARC of Hawaii Hsg. Proj. No. 8		Waipahu	Oahu	The ARC in Hawaii	(808)737-7995	10
SN	ARC of Hawaii Proj. No. 10		Honolulu	Oahu	The ARC in Hawaii	(808)737-7995	10
SN	ARC of Hawaii Proj. No. 12		Ewa Beach	Oahu	The ARC in Hawaii	(808)589-0754	18
SN	ARC of Hawaii Proj. No. 7		Honolulu	Oahu	The ARC in Hawaii	(808)737-7995	8
SN	Hale 'Alohi		Honolulu	Oahu	Mental Health Kokua	(808)735-6687	13
SN	Hale Kokua Kai		Ewa Beach	Oahu	Mental Health Kokua	(808)737-2523	10
SN	Hale Koho		Honolulu	Oahu	Mental Health Kokua	(808)523-5852	6
SN	Hale Malie		Kaneohe	Oahu	Mental Health Kokua	(808)247-7370	8
SN	Hale Noho		Kaneohe	Oahu	Mental Health Kokua	(808)235-3718	7
SN	Hale Oli		Ewa Beach	Oahu	Mental Health Kokua	(808)737-2523	6
SN	Helemano Plantation Village		Wahiawa	Oahu	Opportunities and Resources, Inc.	(808)622-3929	15
SN	Ko Kakou Hale		Kaneohe	Oahu	Mental Health Kokua	(808)236-1216	8
SN	Res Svcs Proj IV		Honolulu	Oahu	The ARC in Hawaii	(808)737-7995	10
SN	Res Svcs Proj of HARC II		Aiea	Oahu	The ARC in Hawaii	(808)737-7995	12
SN	Res Svcs Proj of HARC III		Kailua	Oahu	The ARC in Hawaii	(808)737-7995	18
SN	SHDC No. 1		Kailua	Oahu	Steadfast Housing Development Corporation	(808)599-6230	10
SN	SHDC No. 6		Kaneohe	Oahu	Steadfast Housing Development Corporation	(808)239-2898	6
SN	The Duplex		Pearl City	Oahu	Mental Health Kokua	(808)737-2523	10
SN	Weinberg Hale Haiku		Kaneohe	Oahu	Steadfast Housing Development Corporation	(808)235-4463	5
SN	Weinberg Hale Kuha'o		Waipahu	Oahu	Hawaiian Properties, Ltd.	(808)678-0892	24
SN	Weinberg Hale Lolii		Kaneohe	Oahu	Steadfast Housing Development Corporation	(808)239-7499	5
SN	Hale Ulu Hoi		Hilo	Hawaii	Day-Lum Rentals and Management Inc.	(808)935-4152	18
SN	Hale Ulu Hoi II		Hilo	Hawaii	Day-Lum Rentals and Management Inc.	(808)935-4152	18
SN	Hilo Hale		Hilo	Hawaii	Mental Health Kokua	(808)933-1212	9
SN	Kealahou		Kailua-Kona	Hawaii	Mental Health Kokua	(808)331-1764	6
SN	Kona Kokua		Kailua-Kona	Hawaii	Mental Health Kokua	(808)331-1764	4
SN	Kona Krafts Group Home		Captain Cook	Hawaii	Kona Association for Retarded Citizens	(808)323-2626	6
SN	SHDC No. 2		Hilo	Hawaii	Steadfast Housing Development Corporation	(808)599-6230	6
SN	SHDC No. 5		South Kona	Hawaii	Steadfast Housing Development Corporation	(808)599-6230	6
SN	SHDC No. 7		Honokaa	Hawaii	Steadfast Housing Development Corporation	(808)599-6230	5
SN	SHDC No. 8		Honokaa	Hawaii	Steadfast Housing Development Corporation	(808)599-6230	6
SN	Weinberg Hale Kai Malino		Kailua-Kona	Hawaii	Steadfast Housing Development Corporation	(808)599-6230	6

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Affordable Housing Inventory

Type	Project	Address	City	Island	Managing Agent	Telephone	Units
SN	Weinberg Hale Kupaa		Naalehu	Hawaii	Steadfast Housing Development Corporation	(808)929-7172	5

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
AINAKEA ELDERLY HOUSING PROJECT	533996 AINAKEA DR KAPAAU, HI 96755-0000	(808) 969-3327	202	Elderly and Disabled	21	20	0	0	2	1-BR	8/9/2009
ARC OF HAWAII HOUSING PROJ. NO. 11	1660A LUSITANA ST HONOLULU, HI 96813-1624	(808) 737-7995	202	Disabled	23	20	0	20	9	1-BR	3/13/2009
ARC OF HAWAII HOUSING PROJ. NO. 12	91-824A HANAKAHI ST EWA BEACH, HI 96706-2914	(808) 689-0754	811	Disabled	15	15	0	15	15	1-BR	5/23/2008
ARC OF HAWAII HOUSING PROJECT NO. 7	852A PAAHANA ST HONOLULU, HI 96816-0000	(808) 737-7995	202	Disabled	8	8	0	8	8	1-BR	2/10/2009
ARC OF HAWAII HOUSING PROJECT NUMBER 8	94060 POAILANI CIR WAIPAHU, HI 96797-3270	(808) 737-7995	202	Disabled	10	8	0	8	8	1-BR	7/15/2009
ARC OF HAWAII PROJECT NUMBER 10	1660B LUSITANA ST HONOLULU, HI 96813-1624	(808) 737-7995	202	Disabled	10	8	0	8	8	1-BR	3/13/2009
BANYAN STREET MANOR	1122 BANYAN ST HONOLULU, HI 96817-3478	808.524.2731	221(d)(3)MKT	Family	54	42	0	1	1	1-BR, 2-BR	4/21/2006
BERETANIA NORTH-KUKUI TOWER	35 N KUKUI ST HONOLULU, HI 96817-4118	808.537.4935	236(j)(1)	Family	380	76	0	0	2	1-BR, 2-BR	9/4/2008

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
CAPTAIN COOK ELDERLY HSG. PROJECT	82 1040 KILOA RD CAPTAIN COOK, HI 96704-0000	(808)322-3422	207/223(f)	Elderly and Disabled	21	20	0	0	14	0-BR, 1-BR	1/14/2010
E KOMO MAI	816 KINOOLE ST HILO, HI 96720-3874	808.935.1098	236(j)(1)	Family	45	9	0	0	0	1-BR, 2-BR	4/22/2009
HAILI ELDERLY	227 HAILI ST HILO, HI 96720-2971	(808)961-3273	223(a)(7)/221(d)(3)M	Elderly and Disabled	36	35	0	0	4	1-BR	9/28/2009
HALAWA VIEW APARTMENTS	99009 KALALOA ST AIEA, HI 96701-3815	808.488.3613	236(j)(1)	Family	121	20	0	0	0	2-BR, 3-BR, 4-BR	11/18/2008
HALE 'ALOHI	3443 PAHOA AVE HONOLULU, HI 96816-2158	(808) 735-6687	811	Disabled	12	12	0	12	0	1-BR	5/23/2008
HALE HOALOHA	119 W. LANIKAULA ST HILO, HI 96720-4163	(808) 456 7303		Family	81	80	0	0	4	1-BR, 2-BR, 3-BR, 4-BR	2/3/2009
HALE HOALOHA	119 W. LANIKAULA ST HILO, HI 96720-4163	(808) 456 7303		Family	81	80	0	0	4	1-BR, 2-BR, 3-BR, 4-BR	2/18/2010
HALE KANALOA	450 B KANALOA ST KAHULUI, HI 96732-1103	(808) 244-9669		Disabled	5	4	0	5	5	1-BR	4/9/2009

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
HALE KIHAI	179 Hale Kai ST KIHAI, HI 96753-7002	(808) 879-6784		Disabled	5	5	0	5	5	1-BR	4/9/2009
HALE LAHA'INA	5220 KOHI ST LAHA'INA, HI 96761-8812	(808) 669-0026		Disabled	5	5	0	5	5	1-BR	4/9/2009
HALE LOKAHI AKAHI	755 MAKAAALA DR WAILUKU, HI 96793-9466	(808) 242-5761	202	Disabled	21	20	0	20	6	1-BR	6/3/2009
HALE MAHAOLU AKAHI	300-P W WAKEA AVE KAHULUI, HI 96732-1855	(808)877-0544	202	Elderly	110		110		0	0-BR, 1-BR	2/10/2006
HALE MAHAOLU EKOLU	717 B MAKAAALA DR WAILUKU, HI 96732-9474	(808) 242-4377	207/223(f)	Elderly and Disabled	41	41	41	4	0	0-BR, 1-BR	3/12/2009
HALE MAHAOLU ELIMA	11 Mahoalu Street KAHULUI, HI 96732-3110	808.872.4100	202	Elderly	59	59	59		6	1-BR	2/10/2006
HALE MAHAOLU-ELUA	200-A HINA AVE KAHULUI, HI 96732-1821	(808) 872-4180		Elderly and Disabled	179	179	179	18	18	1-BR	5/15/2009
HALE MALIE	46269 PUNAWAI ST KANE'OLE, HI 96744-4142	(808) 247-7370	811	Disabled	7	7	0	7	0	1-BR	5/23/2008

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
HALE O MANA'O LANA HOU	325 MAHALANI ST WAILUKU, HI 96793-2540	(808) 242-5761	202	Disabled	10	10	0	10	2	2-BR	6/1/2009
HALE O MANA'O LANA HOU PH II	325 MAHALANI ST WAILUKU, HI 96793-2540		811	Disabled	15	15	0	15	2	1-BR	6/2/2008
HALE O' HAUOLI ELDERLY	950 LUEHU ST PEARL CITY, HI 96782-2635	(808) 455-4744		Elderly and Disabled	100	99	99	0	0	1-BR	11/21/2008
HALE ULU HOI	1305 ULULANI ST HILO, HI 96720-4169	808.935.8534	202	Elderly and Disabled	18	17	0	17	0	1-BR	1/22/2009
HALE ULU HOI II	1305-F ULULANI ST HILO, HI 96720-4169	808.935.8534	202	Elderly and Disabled	18	18	0	18	0	1-BR	1/22/2009
HARRY & JEANETTE WEINBERG SILVERCREST	520 PINE AVE WAHIAWA, HI 96786-1812	(808)622-2785	202/162	Elderly	80	78	78	0	6	1-BR, 2-BR	3/16/2006
HAUSTEN GARDENS	808 HAUSTEN ST HONOLULU, HI 96826-3094	(808) 947-3423	221(d)(3)MKT	Elderly	49	47	49	3	3	1-BR	9/30/2009
HELEMANO PLANTATION VILLAGE	641510 KAMEHAMEHA HWY WAHIAWA, HI 96786-2915	808.622.3929	202	Elderly and Disabled	12	12	0	12	12	1-BR	7/8/2009

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
HILO HALE	208 WAINAKU AVE HILO, HI 96720-2311	(808) 933-1212	811	Disabled	8	8		8	0	1-BR	6/9/2010
HOME PUMEHANA	290 KOLAPA PLACE KAUNAKAKAI, HI 96748-0000	(808) 553-5788	202	Elderly and Disabled	79	79	0	0	9	1-BR	8/24/2009
Hale Koho	1316 Dominis Street HONOLULU, HI 96822-0000		811	Disabled	6	6	0	6	0	1-BR	5/23/2008
Hale Mahaolu Eha	1057 MAKAWAO AVE MAKAWAO, HI 96768-9431	(808) 573-1647	202	Elderly	39	39	39		2	1-BR	2/10/2006
Hale Mahaolu Eono	810 Kelawe St Lahaina, HI 96761-1421	808-661-5957	202	Elderly	19	19	19		2	1-BR	2/10/2006
Hale Mahaolu Eono 5	810 Kelawe St Lahaina, HI 96761-0000		202	Elderly	5	5	5		1	1-BR	2/10/2006
Hale Noho	45-545 Awapapa Place KANEHOE, HI 96744-1924	808 7372523	811	Disabled	7	7	0	7	0	1-BR	5/23/2008
Harry and Jeanette Weinberg Kea'au Elderly Housing	16-184 Pili Mua St KEAAU, HI 96749-8134	(808) 982-9448	202	Elderly	20	19	19		1	1-BR, 2-BR	2/24/2006

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
Harry&Jeanette Weinberg Sen. Residence at Maluhia	1111 HALA DR HONOLULU, HI 96817-2157	(808)842-1082	202	Elderly	40	39	39	0	39	1-BR, 2-BR	3/17/2006
Hilo Val Hala Apartments	120 Puueo Street Hilo, HI 96720-0000		207/223(f)	Family	22	0	0	0	22	0-BR, 1-BR, 2-BR	5/15/2008
Ho'okahua	6330 KOUKALAKA PL WAILUA, HI 96746-0000	(808) 246-3688	811	Disabled	15	15	0	15	0	1-BR	5/23/2008
JACK HALL KONA	74-895 KEALAKEHE ST KAILUA KONA, HI 96740-1422	(808) 326-1204		Family	48	47	0	0	2	1-BR, 2-BR, 3-BR	8/9/2009
JACK HALL WAIPAHAU	94817 KUHAULUA ST WAIPAHAU, HI 96797-2847	(808)949-4111		Family	144	143	0	0	7	1-BR, 2-BR	6/26/2009
KAHO'O'OKAMAMALU	1935 MAIN ST WAILUKU, HI 96793-0000	808-242-5761	811	Disabled	10	10	0	10	0	0-BR, 1-BR, 2-BR	6/2/2008
KAHUKU ELDERLY HOUSING PROJECT	56-154 PU'ULUANA ST KAHUKU, HI 96731-2204	(808)293-1416		Elderly	64	61	64	8	8	1-BR	10/13/2008
KALANI GARDEN APARTMENTS	95-081 KIPAPA DR MILLILANI, HI 96789-1045	808.623.9811	236(j)(1)	Family	119	24	0	0	0	2-BR, 3-BR	9/28/2008

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
KAMANA ELDERLY	145 KAMANA ST HILO, HI 96720-4166	808.935.1098		Elderly and Disabled	62	61	61	0	6	1-BR	6/9/2009
KANEOHE ELDERLY PROJECT	45457 MELI PL KANEOHE, HI 96744-2956	(808) 456-7303		Elderly and Disabled	44	43	43	43	0	1-BR	11/20/2008
KAPUNA I	1015 N SCHOOL ST HONOLULU, HI 96817-2940	(808) 845-2130		Elderly and Disabled	162	161			0	1-BR	2/24/2009
KAUAI ECONOMIC OPPORTUNITY, INC.	1608 PAPAU ST KAPAA, HI 96746-2515	808.245.4077	202	Disabled	4	4	0	4	4	1-BR	12/30/2008
KAULUWELA #1	1450 AALA ST HONOLULU, HI 96817-3604	(808)593-9100	236(j)(1)	Family	126	0	0	0	0	1-BR, 2-BR	6/5/2008
KAULUWELA #2	400 N VINEYARD BLVD HONOLULU, HI 96817-3623	(808)521-7563	236(j)(1)	Family	84	0	0	0	0	3-BR, 4-BR	6/1/2008
KEKAHA PLANTATION ELDERLY HOUSING	8215 1 Elepaio Rd KEKAHA, HI 96752-0000	(808) 337-9900		Elderly	36	36	36	0	2	1-BR	1/13/2010
KEOLA HOOMALU ELDERLY	85259 PLANTATION RD WAIANA, HI 96792-2668	(808) 524-2731		Elderly and Disabled	35	35	0	0	0	1-BR	1/13/2009

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
KEWALO APARTMENTS	1407 KEWALO ST HONOLULU, HI 96822-4172	808.531.3233	223a7/241f/221-MR	Family	38	32	0	0	0	2-BR	9/9/2009
KILOHANA APARTMENTS	45-265 WM HENRY RD KANELOHE, HI 96744-3154	(808)235-1844		Family	149		0	0	5	1-BR, 2-BR, 3-BR	3/29/2006
KONA KRAFTS GROUP HOME	82-1055 KILOA RD CAPTAIN COOK, HI 96704-8231	(808)323-2626		Disabled	5	5	0	5	1	0-BR	1/11/2010
KUKUI GARDENS	1305 LILIHA STREET HONOLULU, HI 96817-4657	(808) 532-0033	221(d)(3)BMIR	Family	861	0	0	48	63	1-BR, 2-BR, 3-BR, 4-BR	2/16/2006
KULAIMANO ELDERLY HOUSING PROJECT	28-2947 KUMULA ST PEPEKEO, HI 96783-9420	808.961.8379		Elderly and Disabled	50	50	45	5	0	1-BR	1/13/2009
KULAIMANO ELDERLY HOUSING PROJECT	28-2947 KUMULA ST PEPEKEO, HI 96783-9420	808.961.8379		Elderly and Disabled	50	50	45	5	0	1-BR	1/11/2010
KULANA NANI	46229 KAHUHIPA STREET KANELOHE, HI 96744-3949	8083223422	236(i)(1)	Family	160	32	0	0	7	2-BR, 3-BR, 4-BR	2/5/2009
Kealahou	75-5750 Alanoe Pl Kailua Kona, HI 96740-1814	(808)331-1764	811	Disabled	6	6		6	3	1-BR	6/9/2010

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
Keola Hoonanea	1465 AALA ST HONOLULU, HI 96817-3605	808.544.1600	236(j)(1)	Elderly and Disabled	175	70	0	0	0	1-BR	11/17/2008
Kona Kokua	75-187 Alakai Street Kailua Kona, HI 96740-0000		811	Disabled	4	4		4	4	0-BR	7/23/2008
LAHAINA SURF	1037C WAINEE ST. LAHAINA, HI 96761-0000	(808) 661-3771	236(j)(1)	Family	111	22	0	0	0	1-BR, 2-BR, 3-BR	12/11/2008
LIHUE GARDENS ELDERLY	3120 JERVES ST LIHUE, HI 96766-1160	(808) 456-7303		Elderly and Disabled	58	57	0	0	6	1-BR	6/12/2009
LUANA GARDENS II	615 A W PAPA AVE KAHULUI, HI 96732-2500	(808) 871-9009		Family	53	53	0	0	0	1-BR, 2-BR, 3-BR, 4-BR	3/12/2009
LUANA GARDENS III	711 S KAM AVE KAHULUI, HI 96732-0000	(808)871-9009		Family	62	62	0	0	0	2-BR	3/12/2009
MAKALAPA MANOR APARTMENTS	99-120 Kohomua St. AIEA, HI 96701-3848	(808) 4877114	236(j)(1)	Family	7	4	0	0	0	2-BR, 3-BR, 4-BR, 5-BR	10/15/2009
MALULANI HALE	114 N KUAKINI ST HONOLULU, HI 96817-2453	(808)544-1872	236(j)(1)	Elderly and Disabled	150	60	0	0	0	1-BR	10/22/2009

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
MANA OLA NA KEANUENUE	450A Kanaloa Ave Kahului, HI 96732-1103	(808) 242-9263		Disabled	5	5	0	5	5	1-BR	4/9/2009
MAUNAKEA TOWER APARTMENTS	1245 MAUNAKEA ST HONOLULU, HI 96817-0000	(808)537-9905		Family	380	379	0	0	5	1-BR, 2-BR	4/17/2008
Manana Gardens Apartments	929 Luehu Street PEARL CITY, HI 96782-2676	(808) 455-4225	207/223(f)	Family	72	0			0	2-BR	1/25/2006
Maui Kokua Housing	456 S. Lanai Street KAHULUI, HI 96732-1310		811	Disabled	6	6	0	6	1	1-BR	5/23/2008
OLD VINEYARD ST	265 S. VINEYARD STREET HONOLULU, HI 96813-0000	(808) 524-2731	221(d)(3)MKT	Family	32	21	0	0	0	1-BR, 2-BR, 3-BR	11/23/2009
PAHALA ELDERLY	961183 HOLET ST PAHALA, HI 96777-0000	(808) 969-3327	202	Elderly and Disabled	8	8	0	0	1	1-BR	10/15/2008
PAUAAHI ELDERLY	167 N PAUAAHI ST HONOLULU, HI 96817-5301	(808) 524-5844	202	Elderly and Disabled	48	47	0	0	48	0-BR, 1-BR	12/24/2008
PUALANI MANOR	1216 PUA LN HONOLULU, HI 96817-3874	(808) 543-0511		Family	62	61	0	4	0	1-BR	5/13/2009

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
RES SERVICES PROJECT OF HARC III	83 KIHAPAI ST KAILUA, HI 96734-2689	(808)737-7995	202	Disabled	17	16	0	17	5	1-BR	2/10/2009
RESIDENTIAL SERVICES PROJECT IV	3705 MAHINA AVE HONOLULU, HI 96816-3724	(808) 737-7995	202	Disabled	10	8	0	8	8	1-BR	8/12/2009
RESIDENTIAL SVCS. PROJ. OF HARC II	99-545 HALAWA HTS RD AIEA, HI 96701-3213	(808)737-7995	202	Disabled	12	9	0	9	9	1-BR	8/12/2009
RIVER PAUAAHI APARTMENTS	1155 RIVER ST HONOLULU, HI 96817-5077	(808) 543-0511		Family	49	46	0	3	3	1-BR, 2-BR	12/12/2008
RIVERSIDE APARTMENTS	333 OHAI ST HILO, HI 96720-2354	808.935.1098	236(j)(1)	Family	74	69	0	0	0	1-BR, 2-BR, 3-BR	10/1/2009
SHDC NO. 1	317B OLOMANA ST KAILUA, HI 96734-5509	(808)599-6230	811	Disabled	12	10	0	10	4	1-BR	5/28/2008
SHDC NO. 2	192 MOHOULI ST HILO, HI 96720-3953	(808)599-6230	811	Disabled	6	5	0	5	2	1-BR	5/23/2008
SHDC NO. 5	81-6618 KAE0 PL SOUTH KONA, HI 96750-0000	808.599.6230	811	Disabled	6	5	0	5	2	1-BR	5/28/2008

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
SHDC NO. 6	47-690 HUI ALALA ST KANEHOE, HI 96744-0000	(808)599-6230	811	Disabled	6	5	0	5	2	1-BR	5/28/2008
SHDC NO. 7	2857 Moko St. LIHUE, HI 96766-0000	808.599.6230	811	Disabled	6	5	0	5	2	1-BR	5/28/2008
SHDC NO. 8	45-3315 OHIA ST HONOKAA, HI 96727-0000	808.599.6230	811	Disabled	5	5		5	1	0-BR	7/22/2009
SMITH-BERETANIA APARTMENTS	1170 NUUANU AVE HONOLULU, HI 96817-5142	(808) 521-6486		Family	164	164	0	8	8	1-BR, 2-BR	10/15/2009
Senior Residence at Kaneohe	45-705 Kamehameha Hwy Apt A KANEHOE, HI 96744-2909	808-235-2898	202	Elderly	44	44	44		3	1-BR	2/8/2006
THE DUPLEX	1296 HOOLI CIR PEARL CITY, HI 96782-1907	(808) 737-2523		Disabled	10	10	0	10	0	1-BR	5/14/2009
WAIMEA ELDERLY HOUSING PROJECT	67 5165 KAMAMALU ST KAMUELA, HI 96743-0000	(808) 885-4423	202	Elderly	40	39	39	0	4	1-BR	5/31/2007
WAIPAHU HALL ELDERLY	941060 WAIPAHU ST WAIPAHU, HI 96797-3651	(808) 671-3801		Elderly and Disabled	72	71	0	0	7	1-BR	9/28/2009

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
WAIPAHAU TOWER	94-337 Pupumomi St. Waipahu, HI 96797-0000	808.671.0162	236(i)(1)	Family	64	64	0	0	0	1-BR, 2-BR	12/15/2008
WESTLAKE APARTMENTS	3139 ALA ILIMA ST HONOLULU, HI 96818-3049	(808)544-1600	221(d)(4)MKT	Family	95	95	0	0	0	2-BR	5/8/2009
WILIKINA APARTMENTS	730 WILIKINA DR WAHIKAWA, HI 96786-1460	(808)524-2731		Family	117	117				1-BR, 2-BR	3/23/2006
Weinberg Hale Haiku	46-273 Haiku Rd Kaneohe, HI 96744-4144	808 5996230	811	Disabled	6	5	0	5	2	1-BR	5/28/2008
Weinberg Hale Kupaa	94-6733 Kamaoa Road Naalehu, HI 96772-0000		811	Disabled	6	5	0	5	2	1-BR	5/28/2008
Weinberg Hale Lolii	45498 Lolii Street Kaneohe, HI 96744-5910	808 5996230	811	Disabled	6	5	0	5	2	1-BR	5/28/2008

MFH Inventory Survey of Units for the Elderly and Disabled

Property Name	Address	Phone	Section of the Act	Occupancy Eligibility	Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features	Available Bedroom Sizes	Survey Date
					Total Units	Total Assisted Units	Total Units Designated for Elderly	Total Units Designated for the Disabled	Total Units with Accessible Features		
					6,229	3,766	1,113	505	469		

Report Parameters:

HUB:
Site:
State: HAWAII
Property ID:
Surveys Dated Prior to:
Congressional District:
Zip Code:

APPENDIX B

AGENCIES CONTACTED

About 120 agencies were contacted to provide information through interviews, and the 27 agencies listed below agreed, with a total of 34 personnel participating.

Access to Independence (Honolulu County)
Aloha Independent Living Hawaii
ARC of Maui
Big Island Housing Foundation
CK Independent Living Builders
Developmental Disabilities Council
Disability Communication and Access Board
Friendship House (Kauai County)
Hawaii Civil Rights Commission
Hawaii County, Office of Housing and Community Development
Hawaii County District Health Office, Children with Special Health Needs
Hawaii Department of Hawaiian Home Lands
Hawaii Department of Health, Developmental Disabilities Division
Hawaii Department of Health, Children with Special Health Care Needs
Hawaii Department of Human Services, Benefits, Employment, and Support Services Division
Hawaii Disability Rights Center
Hawaii Housing Development and Finance Corporation
Hawaii Public Housing Authority
Honolulu County, Department of Community Services
Honolulu County, Office of Housing
Hope Inc. (Hawaii County)
HUD Hawaii Field Office
Kauai County, Housing Agency
Legal Aid Society of Hawaii
Maui County, Housing Division
Resident Rentals Inc. (Hawaii County)
University of Hawaii at Manoa, Department of Urban & Regional Planning

APPENDIX C

STUDY MATERIALS APPROVED BY UNIVERSITY OF HAWAII AT MANOA COMMITTEE ON HUMAN STUDIES

<i>1. Approval of Proposed Fair Housing Study by UH Committee on Human Studies</i>	<i>161</i>
<i>2. Brochure on Fair Housing Study for People with Disabilities</i>	<i>163</i>
<i>3. Script for Use by Agency Personnel Assisting in Recruiting People with Disabilities</i>	<i>164</i>
<i>4. Consent to Participate in Research Study by People with Disabilities</i>	<i>165</i>
<i>5. Fair Housing Study Interview Questions for People with Disabilities</i>	<i>167</i>
<i>6. Oral Informed Consent for Housing Personnel to Participate in Research Study.....</i>	<i>168</i>
<i>7. Fair Housing Study Interview Questions for Housing Personnel</i>	<i>169</i>



UNIVERSITY
of HAWAII®
MĀNOA

Office of Research Compliance
Human Studies Program

MEMORANDUM

November 19, 2015

TO: David Leake
Principal Investigator
Center on Disability Studies

FROM: Denise A. Lin-DeShetler, MPH, MA
Director

A handwritten signature in black ink, appearing to read 'D. Lin-DeShetler'.

SUBJECT: CHS # 23297, "Analysis of Impediments to Fair Housing Choice for People with Disabilities"

This is to acknowledge receipt of your response received October 5, 2015 to the stipulations issued by the Human Studies Program during its review of the project identified above at its meeting on September 18, 2015. The information you provided satisfactorily addressed the Human Studies Program stipulations, and the project is approved for one year, effective November 12, 2015.

This memorandum is your record of the Human Studies Program approval of this study. Please maintain it with your study records.

The Human Studies Program approval for this project will expire on November 11, 2016. If you expect your project to continue beyond this date, you must submit an application for renewal of this Human Studies Program approval. The Human Studies Program approval must be maintained for the entire term of your project.

If, during the course of your project, you intend to make changes to this study, you must obtain approval from the Human Studies Program prior to implementing any changes. If an Unanticipated Problem occurs during the course of the study, you must notify the Human Studies Program within 24 hours of knowledge of the problem. A formal report must be submitted to the Human Studies Program within 10 days. The definition of "Unanticipated Problem" may be found at: http://hawaii.edu/irb/download/documents/SOPP_101_UP_Reporting.pdf, and the report form may be downloaded here: http://hawaii.edu/irb/download/forms/App_UP_Report.doc.

You are required to maintain complete records pertaining to the use of humans as participants in your research. This includes all information or materials conveyed to and received from participants as well as signed consent forms, data, analyses, and results. These records must be maintained for at least three years following project completion or termination, and they are subject to inspection and review by the Human Studies Program and other authorized agencies.

1960 East-West Road
Biomedical Sciences Building B104
Honolulu, Hawai'i 96822
Telephone: (808) 956-5007
Fax: (808) 956-8683

An Equal Opportunity/Affirmative Action Institution

CHS #23297
Page 2
November 19, 2015

Please notify this office when your project is completed. Upon notification, we will close our files pertaining to your project. Reactivation of the Human Studies Program approval will require a new Human Studies Program application.

Please contact this office if you have any questions or require assistance. We appreciate your cooperation, and wish you success with your research.

Do You Have A Story To Share About Housing Problems For People With Disabilities?



Researchers at the University of Hawaii are doing a study of barriers faced by people with disabilities in getting housing that meets their wishes and needs.

As part of this study we are interviewing people with disabilities about their housing experiences. The interview should take about 20 minutes. The people interviewed will not receive any personal benefits.

However, the results of the study may lead to improvements that make it easier for people with disabilities to find good housing in the future.

If you would like to take part in the study or have questions about it, please contact:
uh.fair.housing.study@gmail.com

808-343-4532

This study has been approved by the University of Hawaii Human Studies Program through November 11, 2016 (CHS#23297)

**Script for Use by Agency Personnel Assisting in the Recruitment of
People with Disabilities to Participate in the Fair Housing Study**

(Note: This script is for use by personnel of agencies that support people with disabilities to obtain appropriate housing or of agencies that process complaints about housing discrimination based on disabilities.)

I would like to tell you about a study in which you might want to take part. The purpose of the study is to find out about the problems that people with disabilities might face when they try to find housing. This study is being conducted by faculty of the University of Hawaii at Manoa. They are interviewing people with disabilities such as yourself who have been in the market for housing. In these interviews, they ask people about their experiences and also their opinions about how to improve the system. The interview takes about half an hour. The people who are interviewed are not paid and they are not likely to gain any personal benefit. However, what they say may help the researchers to develop recommendations that will improve the system so people with disabilities will be able to find housing more easily in the future. If you are interested, I will tell you who to contact. Or if you prefer I can give them your contact information and they will get in touch with you. If you mutually agree to do the interview, they will make an appointment with you at a time and place that is convenient for you.

Researcher contact information:

David Leake

leake@hawaii.edu

(808) 221-1779 (cell)

University of Hawaii
Consent to Participate in Research Study by People with Disabilities
Analysis of Impediments to Fair Housing Choice for People with Disabilities

My name is _____. I am a faculty member in the College of Education at the University of Hawaii. I am working on a study about the problems people with disabilities often face when they try to find housing that is affordable and meets their needs related to their disabilities. I am asking you to participate because you have reported facing such problems yourself.

Activities and Time Commitment: If you agree to be interviewed, I will meet with you at a location and time convenient for you. The interview will consist of about 10 open ended questions. It will take about 30 minutes. Interview questions will include questions like, “Please describe all instances of housing discrimination you have experienced” and “How would you describe how well the housing system works for people in general compared to people with disabilities in Hawaii?” Only you and I will be present during the interview. I ask that you agree for me to audio-record the interview so that we can later transcribe the interview and analyze the responses. If you do not want the interview recorded, then I will take written notes. You will be one of about 12 people with disabilities we will interview for this study.

Benefits and Risks: There will be no direct benefit to you for participating in this interview. The results of this project may help improve the access of people with disabilities to affordable housing that meets their needs in the future. I believe there is little risk to you in participating in this study. You may become stressed or uncomfortable answering any of the interview questions or discussing topics with me during the interview. If you do become stressed or uncomfortable, you can skip the question or take a break. You can also stop the interview or you can withdraw from the study altogether at any time.

Privacy and Confidentiality: I will keep all information in a safe place. Only our research team at the University of Hawaii will have access to the information. Other agencies that have legal permission have the right to review research records. The University of Hawaii Human Studies Program has the right to review research records for this study. After we write down what was said in our interview, we will erase or destroy the audio-recordings. When we report the results of the study, we will not use your name or any other personal identifying information that can identify you. We will use pseudonyms (fake names) and report findings in a way that protects your privacy and confidentiality to the extent allowed by law.

Voluntary Participation: Your participation in this project is completely voluntary. You may stop participating at any time. If you stop being in the study, there will be no penalty or loss to you. Your choice to participate or not participate will not affect your rights to any services you receive.

Questions: If you have any questions about this study, please call the study director, David Leake, at 808-956-0820 or email him at leake@hawaii.edu. If you have questions about your rights as a research participant, you may contact the UH Human Studies Program at 808-956-5007 or uhirb@hawaii.edu.

If you consent to be in this study, please sign the signature section below.

Please keep the first page above for your records.

Signature(s) for Consent:

“I give my permission to join the research project entitled,
Analysis of Impediments to Fair Housing Choice for People with Disabilities.”

Please initial next to either “Yes” or “No” to the following:

_____ Yes _____ No I consent to be audio-recorded for the interview portion of this study.

Name of Participant (Print): _____

Participant’s Signature: _____

If Applicable: Guardian/Power of Attorney Printed Name _____

If Applicable: Guardian/Power of Attorney Signature _____

Signature of the Person Obtaining Consent: _____

Date: _____

This study has been approved by the University of Hawaii Human Studies Program through November 11, 2016 (CHS#23297).

Fair Housing Study Interview Questions for People with Disabilities

(Note: A caretaker or other responsible person may answer on behalf of an interviewee with limited communication.)

You have been identified as a person who experienced discrimination in getting housing due to disabilities. First, can you describe your specific disabilities?

Please describe all instances of housing discrimination you have experienced. For each instance, explain why you believe there was discrimination, whether you filed a complaint, and what else you did to try to correct it?

Please also describe instances where you had a satisfactory housing experience. Who, if anyone, helped you obtain the housing and how did they help?

What have your experiences been like with government and non-profit agencies regarding housing problems?

How would you describe how well the housing system works for people in general compared to people with disabilities in Hawaii?

In your opinion, what are the biggest barriers for people with disabilities when they try to find housing in Hawaii?

Do you have any recommendations for what the government should do to reduce those barriers?

Is there anything else you would like to tell me about housing for people with disabilities?

ORAL INFORMED CONSENT
Analysis of Impediments to Fair Housing Choice for People with Disabilities

Script to Read for Prospective Interviewees:

“Hello, my name is _____. I am on a team at the Center on Disability Studies at UH Manoa that is doing research on the barriers that people with disabilities might face when they look for housing. I am calling because you have been identified as a knowledgeable person who would be good to ask questions about housing issues in Hawaii. This interview should take about 20 minutes. Although you will not benefit personally from being interviewed, your answers will help us develop a report with recommendations that might help public and private agencies improve access to housing for people with disabilities. The main possible risk is that your personally identifiable information might be obtained by unauthorized individuals. To prevent this, we will store all data in encrypted password-protected files on password-protected computers kept in a room that is locked when staff are not present, and your data will be labeled with a code number rather than your name. In addition, we will not use your name or other identifying information in any reports or other publications. Your participation is voluntary, and you can decline to answer any question or to end the interview at any time, without explaining why.

“If you have any additional questions about this research or your participation in it, please feel free to contact me, or our study director Dr. David Leake, or the UH Manoa Human Studies Program at any time, for which I can give you contact information if you’d like.

“Do you have any questions about this research? Do you agree to participate?”

If “yes”:

“May I record our discussion to ensure accuracy? We will maintain your confidentiality by transcribing that recording to a password protected file on a password protected computer, and then erasing the recording. If you would prefer not to have the recording, I will take notes by hand.”

I attest that the above consent text has been orally presented to the human subject and the human subject provided me with an oral assurance of their willingness to participate in the research.

Interviewer Printed Name

Interviewee Name

Interviewer Signature

Date

This study has been approved by the University of Hawaii Human Studies Program through November 11, 2016 (CHS#23297)

Fair Housing Study Interview Questions for Housing Personnel

What is your role in the housing system, and how long have you been in this role?

How are you involved in addressing housing discrimination for people with disabilities?

Roughly about how many cases of housing discrimination against people with disabilities have you been involved with?

I'd like to hear your opinions about various housing issues for people with disabilities in Hawaii. To begin with, how about the issue of affordability? How is this problem different for people with disabilities compared to the general population? Do you have any recommendations on how affordability can be improved specifically for people with disabilities?

What do you think are the most common forms of discrimination that make it difficult for people with disabilities to find appropriate housing? Do you have any recommendations on how these forms of discrimination can be reduced?

Fully accessible housing is very important issue for some people with disabilities, such as those who use wheelchairs. Do you think there is enough accessible housing available? Are people with disabilities usually able to make modifications they need to their units? What are the biggest barriers to accessibility? Do you have any recommendations on how these barriers can be reduced?

How about the issue of service animals? Can most people who need service animals find appropriate housing? What are the biggest barriers to having service animals? Do you have any recommendations on how these barriers can be reduced?

What about reasonable accommodations, such as being away from excessive noise or being on the ground floor in a building without elevators? Can most people who need accommodations obtain them? What are the biggest barriers to getting accommodations? Do you have any recommendations on how these barriers can be reduced?

Psychiatric disabilities are quite common. Are there barriers to fair housing that people with psychiatric disabilities are more likely to face than people with other kinds of disabilities? If yes, do you have any recommendations on how these barriers can be reduced?

Overall, how well does the housing system work for people in general compared to people with disabilities in Hawaii?

In your opinion, what are the one or two most critical things that need to be done to ensure fair housing choice for people with disabilities in Hawaii?

APPENDIX D

HOUSING ASSISTANCE RESOURCES FOR PEOPLE WITH DISABILITIES AT THE HAWAII STATE ADRC WEBSITE

https://www.hawaiiadrc.org/Portals/_AgencySite/Disablity/Housing.pdf

Last Update: September 25, 2015

This listing does not constitute an endorsement of or liability for any agency, program, or service. The Hawaii ADRC will make every effort to provide complete and accurate information, but it neither guarantees nor makes any representation as to the accuracy or completeness of the information. The user takes full responsibility to further research the services and information listed.

HOUSING ASSISTANCE

The agencies listed may help low-income persons with disabilities to find a place to live. Some of the agencies will also help with financial assistance in paying rent.

U.S. Department of Housing and Urban Development

Phone: 808.457.4662

Website: <http://portal.hud.gov/hudportal/HUD?src=/states/hawaii>

The U.S. Department of Housing and Urban Development (HUD) administers Federal aid to local housing agencies (HAs) that manage public housing and the Section 8 Housing Choice vouchers for low-income Hawaii residents. The HUD website has a database of HUD homes for sale and low rent apartments located in Hawaii. (Government Agency)

Honolulu County

City and County of Honolulu, Community Assistance

Phone: 808.768.7762

Website: www.honolulu.gov/dcs/housing.html

Community Assistance Division (CAD) provides rental assistance to eligible low income families and assists lower and gap-group income families to achieve homeownership. In addition to rental assistance, CAD provides Rehabilitation Home Loans to for Low/Moderate Income Homeowners.

(Government Agency)

Hawaii Public Housing Authority - Oahu

Phone: 808.832.5961

Website: www.hpha.hawaii.gov/

The Hawaii Public Housing Authority helps provide Hawai'i residents with affordable housing and shelter without discrimination. HPHA efforts focus on developing affordable rental and supportive housing, public housing and the efficient and fair delivery of housing services to the people of Hawaii.

(Government Agency)

Hawaii Affordable Properties, Inc. (HAPI)

Phone: 808.589.1845

Website: <http://hawaiiiaffordable.com/>

HAPI manages affordable residential apartments located on Oahu.

(Non-Profit Organization)

Steadfast Housing Development Corporation - Oahu

Phone: 808.599.6230

Website: www.steadfast-hawaii.org/

Steadfast Housing Development Corporation administers a continuum of housing and employment options throughout the state of Hawaii to adults with serious and persistent mental illnesses.

(Non-Profit Organization)

Housing Solutions Incorporated (HSI) - Oahu

Phone: 808.973.0050

Website: www.hsiservices.net/home

HSI provides transitional and affordable long term housing on Oahu. Transitional properties are located in metropolitan Honolulu – two for families, one for working individuals, and one for the elderly. The long term housing program includes properties located in metropolitan Honolulu and Waianae.

(Non-Profit Organization)

EAH Housing Corporation – Oahu

Phone: 808.523.8826

Website: www.eahhousing.org/

EAH Housing Corporation website features current and future affordable housing for older adults and persons with disabilities to be independent and remain close to family and the community. EAH Housing offers a culturally sensitive system of social and healthy lifestyle activities tailored to the individual, empowering older adults with the opportunity for independence, integrity and dignity.

(Non-Profit Organization)

Safe Haven Oahu

Phone: 808.737.2523

Website: www.mentalhealthkokua.org/safehaven.html

Safe Haven is permanent supported housing for single, homeless adults with mental illnesses who are vulnerable, disoriented and fearful. Safe Haven offers outreach, medical and psychiatric care, case management, 24-hour residential services, and social rehabilitation activities.

(Non-Profit Organization)

The Institute for Human Services (IHS) - Oahu

Phone: 808.477.2863

Website: www.ihshawaii.org/

The IHS Housing Program assists families and individuals to either prevent them from becoming homeless or to help them out of homelessness. To accomplish this task, IHS has several different programs available that assist households by providing housing subsidies, security and utility deposits, first month's rent, or possibly even past due rent. Each program has different criteria, and applicants must provide documentation to be eligible. The Housing Program may also assist with obtaining and retaining suitable rental housing, provide case management services and landlord support as well as mediation of landlord/tenant issues.
(Non-Profit Organization)

Catholic Charities Hawaii - Oahu

Phone: 808.524.4673

Website: www.catholiccharitieshawaii.org/programs/housing-and-shelter

Catholic Charities Hawaii's Housing and Shelter programs are designed to help people move into or maintain affordable permanent housing and attain self-sufficiency. Our programs provide transitional housing, housing placement, counseling, financial and material assistance, case management, employment training, and budgeting and tenant education including workshops on the Landlord-Tenant Code.

(Non-Profit Organization)

Access to Independence Oahu

Phone: 808.347.7944

Website: <http://accesstoindependence.org/our-organization/>

Access to Independence Oahu assists clients with housing options, how to access financial assistance for housing, and how to make their homes accessible to accommodate their disability.

(Non-Profit Organization)

Aloha Independent Living Hawaii – Statewide

Phone: 1.800.385.2454

Website: www.AlohaILHawaii.org

Aloha Independent Living Hawaii provides independent living programs and services for persons with disabilities on Oahu. AILH staff will do home visits.

(Non-Profit Organization)

Hawaii County

County of Hawaii, Office of Housing and Community Development

Phone: 808.959.4642

Website: www.hawaiicounty.gov/office-of-housing/

The Office of Housing and Community Development is responsible for the planning, administration and operation of all of the County of Hawaii's housing programs such as the Section 8 rental assistance for qualified families.

(Government Agency)

Hawaii Public Housing Authority – Hawaii (Big Island)

Phone: 808.974.4000, extension 24692

Website: www.hpha.hawaii.gov/

The Hawaii Public Housing Authority helps provide Hawai'i residents with affordable housing and shelter without discrimination. HPHA efforts focus on developing affordable rental and supportive housing, public housing and the efficient and fair delivery of housing services to the people of Hawaii.
(Government Agency)

Steadfast Housing Development Corporation – Hawaii (Big Island)

Phone: 808.935.9600

Website: www.steadfast-hawaii.org/

Steadfast Housing Development Corporation administers a continuum of housing and employment options throughout the state of Hawaii to adults with serious and persistent mental illnesses.

(Non-Profit Organization)

Hawaii Affordable Properties, Inc. (HAPI) – Hawaii (Big Island)

Phone: 808.322.3422

Website: <http://hawaiiaffordable.com/>

HAPI manages affordable residential apartments located on the Big Island of Hawaii.

(Non-Profit Organization)

Big Island Housing Foundation (BIHF)

Phone: 808.969.3327

Website: <http://bigislandhousing.com/>

BIHF operates the following properties for low and moderate income families in Hawaii County: E Komo Mai, a multi-family apartment complex, Kamana Elderly, Kea'au Elderly, Papaaloa Elderly, and Waimea Elderly. Each of these properties, with the exception of Papaaloa Elderly, is HUD-subsidized.

(Non-Profit Organization)

Catholic Charities Hawaii – Hawaii (Big Island)

Phone: 808.935.4673

Website: www.catholiccharitieshawaii.org/programs/housing-and-shelter

Catholic Charities Hawaii's Housing and Shelter programs are designed to help people move into or maintain affordable permanent housing and attain self-sufficiency. Our programs provide transitional housing, housing placement, counseling, financial and material assistance, case management, employment training, and budgeting and tenant education including workshops on the Landlord-Tenant Code.

(Non-Profit Organization)

Aloha Independent Living Hawaii – Statewide

Phone: 808.339.7297 (Big Island)

Website: www.AlohaILHawaii.org

AILH provides independent living programs and services for persons with disabilities on Maui and Molokai. AILH staff will do home visits.

(Non-Profit Organization)

Maui County

County of Maui, Housing Division

Phone: 808.270.7351

Website: www.mauicounty.gov/index.aspx?nid=251

The Housing Division is responsible for the Section 8 Rental Assistance Program; Section 8 rental assistance for families participating in the State's Welfare-to-Work Program; promotion of fair housing practices in the County of Maui; First Time Homebuyers Assistance Program; and the Affordable Housing Fund.

Program.

(Government Agency)

Hawaii Public Housing Authority – Maui, Molokai, Lanai

Phone: 808.974.2400 extension 24692 (Maui)

Phone: 1.800.468.4644 extension 24692 (Molokai and Lanai)

Website: www.hpha.hawaii.gov/

The Hawaii Public Housing Authority helps provide Hawai'i residents with affordable housing and shelter without discrimination. HPHA efforts focus on developing affordable rental and supportive housing, public housing and the efficient and fair delivery of housing services to the people of Hawaii.

(Government Agency)

Steadfast Housing Development Corporation – Maui

Phone: 808.244.0885

Website: www.steadfast-hawaii.org/

Steadfast Housing Development Corporation administers a continuum of housing and employment options throughout the state of Hawaii to adults with serious and persistent mental illnesses.

(Non-Profit Organization)

EAH Housing Corporation – Maui

Phone: 808.523.8826

Website: www.eahhousing.org/

EAH Housing Corporation website features current and future affordable housing for older adults and persons with disabilities to be independent and remain close to family and the community. EAH Housing offers a culturally sensitive system of social and healthy lifestyle activities tailored to the individual, empowering older adults with the opportunity for independence, integrity and dignity.

(Non-Profit Organization)

Lokahi Pacific - Maui

Phone: 808.242.5761

Website: www.lokahipacific.org/housingafford.html

Lokahi Pacific manages several affordable rental housing projects on Maui: Hale O Mana'o Lana Hou is a long-term residence for chronically mentally ill persons; Kaho'okamamalu provides long-term housing for persons with special needs; Hale Lokahi Elua is an affordable rental

apartment complex developed to assist "gap group" renters on the island of Maui; Hale Lokahi Akahi, is a long-term residence for the physically disabled; and 62 Market Street provides affordable single-family rentals.

(Non-Profit Organization)

Hale Mahaolu - Maui

Phone: 808.872.4100

TDD: 808.545.1833 extension 432

Website: <http://halemahaolu.org/housing/senior-housing/>

Hale Mahaolu's manages 10 senior housing sites: Akahi; Elua; Ekolu; Eha; Elima; Eono; Ehiku; Home Pumehana on Molokai; Hale Kupuna O Lanai on Lanai; and Lokenani Hale. There are recreational activities available at each of the elderly site such as those provided by Kaunoa Senior Services and through various community groups.

(Non-Profit Organization)

Hawaii Affordable Properties, Inc. (HAPI) - Maui

Phone: 808.589.1845

Website: <http://hawaiiaffordable.com/>

HAPI manages affordable residential apartments located on Maui.

(Non-Profit Organization)

Catholic Charities Hawaii - Maui

Phone: 808.873.4673

Website: www.catholiccharitieshawaii.org/programs/housing-and-shelter

Catholic Charities Hawaii's Housing and Shelter programs are designed to help people move into or maintain affordable permanent housing and attain self-sufficiency. Our programs provide transitional housing, housing placement, counseling, financial and material assistance, case management, employment training, and budgeting and tenant education including workshops on the Landlord-Tenant Code.

(Non-Profit Organization)

Aloha Independent Living Hawaii - Statewide

Phone: 808.866.3783 (Maui) 808.866.3792 (Molokai)

Website: www.AlohaILHawaii.org

AILH provides independent living programs and services for persons with disabilities on Maui and Molokai. AILH staff will do home visits.

(Non-Profit Organization)

Kauai County

Kauai Economic Opportunity (KEO)

Phone: 808.245.4077

Website: www.keoinc.org/index.php/homeless

KEO administers the Homeless Emergency Shelter Program, the Shelter Plus Care Program, Homeless Stipend Program, and the Homeless Outreach Program. Mana'olana, Lihue Court, and Puhi are transitional housing sites which provide a safe shelter for up to 24 months and assist

homeless persons towards permanent housing through coordination of health, housing, financial and social services.

(Government Agency)

Hawaii Public Housing Authority – Kauai

Phone: 808.274.3141 extension 24692

Website: www.hpha.hawaii.gov/

The Hawaii Public Housing Authority helps provide Hawai'i residents with affordable housing and shelter without discrimination. HPHA efforts focus on developing affordable rental and supportive housing, public housing and the efficient and fair delivery of housing services to the people of Hawaii.

(Government Agency)

Hawaii Affordable Properties, Inc. (HAPI) - Kauai

Phone: 808.589.1845

Website: <http://hawaiiaffordable.com/>

HAPI manages affordable residential apartments located on Kauai.

(Non-Profit Organization)

EAH Housing Corporation – Kauai

Phone: 808.523.8826

Website: www.eahhousing.org/

EAH Housing Corporation website features current and future affordable housing for older adults and persons with disabilities to be independent and remain close to family and the community. EAH Housing offers a culturally sensitive system of social and healthy lifestyle activities tailored to the individual, empowering older adults with the opportunity for independence, integrity and dignity.

(Non-Profit Organization)

Catholic Charities Hawaii - Kauai

Phone: 808.241.4673

Website: www.catholiccharitieshawaii.org/programs/housing-and-shelter

Catholic Charities Hawaii's Housing and Shelter programs are designed to help people move into or maintain affordable permanent housing and attain self-sufficiency. Our programs provide transitional housing, housing placement, counseling, financial and material assistance, case management, employment training, and budgeting and tenant education including workshops on the Landlord-Tenant Code.

(Non-Profit Organization)

Aloha Independent Living Hawaii - Statewide

Phone: 808.652.6092 (Kauai)

Website: www.AlohaILHawaii.org

AILH provides independent living programs and services for persons with disabilities on Maui and Molokai. AILH staff will do home visits.

(Non-Profit Organization)

APPENDIX E

FAIR HOUSING COMPLAINTS WITH DISABILITY AS PRIMARY BASIS

1. US Department of Justice Explanation of Housing Discrimination Based on Disability178

The Department of Justice's Civil Rights Division website provides explanations of discriminatory housing practices for each protected class (<https://www.justice.gov/crt/fair-housing-act-1>). The explanation for the disability protected class is reproduced here.

2. Complaint Alleging Hawaii Public Housing Authority Does Not Meet Percent Accessible Units Requirement, filed by the Hawaii Disability Rights Center in July 2016180

Department of Justice Explanation of Housing Discrimination Based on Disability
(Updated November 23, 2015)

Discrimination in Housing Based Upon Disability

The [Fair Housing Act](#) prohibits discrimination on the basis of disability in all types of housing transactions. The Act defines persons with a disability to mean those individuals with mental or physical impairments that substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act, by virtue of that status. The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability. The Division's enforcement of the Fair Housing Act's protections for persons with disabilities has concentrated on two major areas. One is insuring that [zoning and other regulations concerning land use](#) are not employed to hinder the residential choices of these individuals, including unnecessarily restricting communal, or congregate, residential arrangements, such as group homes. The second area is insuring that newly constructed multifamily housing is built in accordance with the Fair Housing Act's [accessibility requirements](#) so that it is accessible to and usable by people with disabilities, and, in particular, those who use wheelchairs. There are other federal statutes that prohibit discrimination against individuals with disabilities, including the Americans with Disabilities Act, which is enforced by the [Disability Rights Section](#) of the Civil Rights Division.

Discrimination in Housing Based Upon Disability Group Homes

Some individuals with disabilities may live together in congregate living arrangements, often referred to as "group homes." The [Fair Housing Act](#) prohibits municipalities and other local government entities from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against individuals with disabilities. The Fair Housing Act makes it unlawful --

- To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

- To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.
- To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing. What constitutes a reasonable accommodation is a case-by-case determination. Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

There has been a significant amount of litigation concerning the ability of local governmental units to exercise control over group living arrangements, particularly for persons with disabilities. To provide guidance on these issues, the Departments of Justice and Housing and Urban Development have issued a [Joint Statement on Group Homes, Local Land Use and the Fair Housing Act](#).

Discrimination in Housing Based Upon Disability -- Accessibility Features for New Construction

The [Fair Housing Act](#) defines discrimination in housing against persons with disabilities to include a failure "to design and construct" certain new multi-family dwellings so that they are accessible to and usable by persons with disabilities, and particularly people who use wheelchairs. The Act requires all newly constructed multi-family dwellings of four or more units intended for first occupancy after March 13, 1991, to have certain features: an accessible entrance on an accessible route, accessible common and public use areas, doors sufficiently wide to accommodate wheelchairs, accessible routes into and through each dwelling, light switches, electrical outlets, and thermostats in accessible location, reinforcements in bathroom walls to accommodate grab bar installations, and usable kitchens and bathrooms configured so that a wheelchair can maneuver about the space.

Developers, builders, owners, and architects responsible for the design or construction of new multi-family housing may be held liable under the Fair Housing Act if their buildings fail to meet these design requirements. The Department of Justice has brought many enforcement actions against those who failed to do so. Most of the cases have been resolved by consent decrees providing a variety of types of relief, including: retrofitting to bring inaccessible features into compliance where feasible and where it is not -- alternatives (monetary funds or other construction requirements) that will provide for making other housing units accessible; training on the accessibility requirements for those involved in the construction process; a mandate that all new housing projects comply with the accessibility requirements, and monetary relief for those injured by the violations. In addition, the Department has sought to [promote accessibility through building codes](#).



HAWAII DISABILITY RIGHTS CENTER

1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

July 14, 2016

Anne Quesada, Regional Director
SAN FRANCISCO REGIONAL OFFICE
Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
One Sansome Street, Suite 1200
San Francisco, California 94104

Director Quesada:

I am filing this complaint as the Executive Director of the Hawai'i Disability Rights Center (HDRC) pursuant to 24 C.F.R. §8.56(c)(1). Our nonprofit agency is the designated Protection and Advocacy System for the State of Hawai'i. We are mandated by Congress to protect and advocate for the rights of people with physical and mental disabilities.

COMPLAINT

This complaint concerns the Hawai'i Public Housing Authority (HPHA) and its violations of federal law. After a multi-year investigation, we have determined that the HPHA has failed to meet its obligation under 24 C.F.R. §8.22(b), which requires that 5% of the total housing units be wheelchair accessible and an additional 2% of the total units be accessible to people with hearing and visual disabilities, and 24 C.F.R. §8.23(b), which requires 5% of the total units to be wheelchair accessible.

As of February 2016, the HPHA had only 117 units out of its 5,932 total housing units that were fully compliant, which is just 1.97% of its total housing inventory. See Letter from H. Ouansafi to L. Erteschik dated February 19, 2016, attached at pages 011-012. There was no further breakdown to indicate which accessible units were designed for people with mobility impairment and which units were intended for people with visual or hearing impairment.



There are 166 additional units that "require major/minor modification," but there is no indication whether those modifications are being implemented. Likewise, the HPHA has 10 units that are "currently being designed" but not constructed. Finally, 37 units that are "currently under construction" may be completed by the end of 2016. All quotes at page 011. The "require modification," "currently being designed," and "currently under construction" units should ***not*** be counted as accessible for purposes of compliance with 24 C.F.R. §8.22 and 24 C.F.R. §8.23 because they are not "readily accessible to and usable by individuals with handicaps." *See* 24 C.F.R. §§8.22(a) and 8.23(b)(1).

FEDERAL FINANCIAL ASSISTANCE

It is undisputed that HPHA's housing programs receive Federal financial assistance and are therefore subject to the non-discrimination requirements of Section 504 of the Rehabilitation Act.

STATUTE OF LIMITATIONS

Our multi-year investigation leads us to believe that HPHA has had continuing violations of HUD's regulations to implement Section 504 for many years. However, our complaint is driven by the facts as stated in Mr. Ouansafi's letter dated February 19, 2016 (pages 011-012) and is filed within the 180-day period from that date as required by 24 C.F.R. § 8.56(c)(3).

HPHA EXECUTIVE DIRECTOR OUANSAFI

Our advocacy is driven by thorough investigation to gather all of the facts. We often encounter agency resistance and our first approach is usually to attempt to work through that in a collaborative fashion. However, the delays here have been unreasonable and we do not believe that the HPHA Executive Director has been forthright in response to our inquiries. For example:

- Prior to our initial meeting, Mr. Ouansafi wanted to ensure that no HDRC attorneys would be in attendance. Page 20.
- Our first inquiry requested specific information. *See* letter from L. Erteschik to H. Ouansafi dated February 9, 2015, pages 025-026. We received only vague non-specific responses. Page 019, *see also* letter from L. Erteschik to

HUD Field Office Director R. Okahara dated November 6, 2015, pages 015-016.

- At one point, Mr. Ouansafi could not/would not disclose information about the specific number of accessible units, saying he wanted to wait for the *Section 504 Self-Evaluation and Transition Plan* prepared by the National Center for Housing Management, a HPHA contractee. Page 014.

However, despite these promises:

- After the *Section 504 Self-Evaluation and Transition Plan* was completed, Mr. Ouansafi said the report then had to be reviewed by HPHA's Chief Compliance Officer before its disclosure to HDRC. Pages 007 and 014.
- On July 5, 2016, Mr. Ouansafi informed HDRC that the Chief Compliance Officer was no longer with HPHA. Page 001.
- As of the date of this complaint, HDRC has not yet received the *Section 504 Self-Evaluation and Transition Plan*, requested numerous times since March 2015. Pages 001-002, 004-010 and 013-018.

REMEDIES SOUGHT

I am requesting that the HUD Regional Office *investigate* each multifamily housing complex controlled by the HPHA to determine the overall number of units that comply with the HUD regulations implementing Section 504 (24 C.F.R. §§8.22 and 8.23), and the specific number and type of accessible units at each housing address.

If accessibility violations are found, we request that HUD issue an *order* to compel HPHA to make its units readily accessible and usable by people with disabilities. For example, there is anecdotal evidence that the family of a three-year old child with disabilities has been on a waiting list for a ground-floor unit for three years. Page 003. The family currently has a complaint before the Hawai'i Civil Rights Commission. Id.

Furthermore, to the extent that the *Section 504 Self-Evaluation and Transition Plan* by the National Center for Housing Management is the basis for reporting the number of accessible units, our agency requests that HUD *order* HPHA to transmit the entire plan to HDRC.

It is unfortunate that we must bring these noncompliance issues to the attention of the HUD Regional Office. However, due to the lack of cooperation at the local level and the lack of accessible public housing being a problem that has festered for years without demonstrable improvement, we have no choice. The problem is further exacerbated by officials who suppress the flow of factual information. Our agency and staff stand ready to work with you to rectify this problem.

We believe that we have been extremely patient and cooperative in our dealings with the HPHA. However, now is time that formal legal action to ensure compliance with federal law needs to be initiated.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis Erteschik". The signature is fluid and cursive, with the first name "Louis" and last name "Erteschik" clearly distinguishable.

Louis Erteschik
Executive Director

Attachments: Pages 001-026

cc: Governor David Y. Ige
Rachel Wong, Director, Hawai'i Department of Human Services
Hakim Ouansafi, Executive Director, Hawai'i Public Housing Authority
Ryan T. Okahara, Field Office Director - HUD Field Office Honolulu

APPENDIX F

FEDERAL NOTICES, MEMORANDA, AND STATEMENTS RELATED TO FAIR HOUSING

A number of notices, memoranda, and statements have been issued over the years by HUD and/or the US Department of Justice (DOJ) to clarify fair housing issues about which there was conflict or confusion. Some of the more impactful ones regarding fair housing for people with disabilities in particular are provided in this appendix. Although some of these documents are quite lengthy, they are assembled here as a resource showing how interpretations of various aspects of disability-related fair housing law and regulation have been refined over the years.

1. <i>Multiple Chemical Sensitivity Disorder and Environmental Illness as Handicaps (HUD 1992)</i>	185
2. <i>Non-Discrimination and Accessibility for Persons with Disabilities (HUD 2006)</i>	205
3. <i>Reasonable Modifications under the Fair Housing Act (HUD & DOJ 2008)</i>	229
4. <i>ADA Revised Requirements: Service Animals (DOJ 2010)</i>	247
5. <i>New ADA Regulations and Assistance Animals as Reasonable (HUD 2011)</i>	250
6. <i>Promotion of Integrated Pest Management to Address a Major Resident Concern (HUD 2011)</i>	253
7. <i>The Role of Housing in Accomplishing the Goals of Olmstead (HUD 2013)</i>	258
8. <i>Accessibility Requirements for Covered Multifamily Dwellings (HUD & DOJ 2013)</i>	269



OFFICE OF GENERAL COUNSEL

APR 14 1992

MEMORANDUM FOR: All Regional Counsel

FROM: *George L. Weidenfeller*
George L. Weidenfeller, Deputy General Counsel
(Operations), GG

SUBJECT: Multiple Chemical Sensitivity Disorder and
Environmental Illness as Handicaps

The General Counsel has accepted the attached memorandum as the Department's position on the issue of when Multiple Chemical Sensitivity Disorder ("MCS") and Environmental Illness ("EI") are "handicaps" within the meaning of subsection 802(h) of the Fair Housing Act (the "Act"), 42 U.S.C. § 3602(h), and the Department's implementing regulation, 24 C.F.R. § 100.201 (1991). In sum, MCS and EI can be associated with physical impairments which substantially impair one or more of a person's major life activities. Thus, individuals disabled by MCS and EI can be handicapped within the meaning of the Act. However, while MCS or EI can be handicaps under the Act, ordinary allergies generally would not be.

The attached memorandum explains the nature of these conditions, analyzes relevant case precedent, reviews relevant legislative history, summarizes interpretations of other Federal agencies, and discusses prior HUD interpretations. The guidance provided in this memorandum should be distributed to attorneys in your office to assist in analyzing fair housing complaints.

Attachment

cc: All Regional Directors of Fair Housing
and Equal Opportunity

Gordon Mansfield, Assistant Secretary
for Fair Housing and Equal Opportunity

AA-501583-C



MAR 5 1992

OFFICE OF GENERAL COUNSEL

MEMORANDUM FOR: Frank Keating, General Counsel, G

FROM: *CW*
Carole W. Wilson, Associate General Counsel for,
Equal Opportunity and Administrative Law, GM

SUBJECT: Multiple Chemical Sensitivity Disorder and
Environmental Illness as Handicaps

This memorandum analyzes whether Multiple Chemical Sensitivity Disorder ("MCS") and Environmental Illness ("EI") are or can be "handicaps" within the meaning of subsection 802(h) of the Fair Housing Act (the "Act"), 42 U.S.C. § 3602(h), and the Department's implementing regulation, 24 C.F.R. § 100.201 (1991).

In sum, we conclude that MCS and EI can constitute handicaps under the Act.¹ Our conclusion is consistent with the weight of both federal and state judicial authority construing the Act and comparable legislation, the Act's legislative history, as well as the interpretation of other Federal agencies, such as the Social Security Administration and the Department of Education, construing legislation within their respective domains. The Civil Rights Division of the Department of Justice has also informed us that it believes MCS and EI can be handicaps under the Act. In addition, HUD has consistently articulated this position, and FHEO agrees with our conclusion.

¹ As for any handicap, whether or not a particular complainant is truly handicapped is subject to a case-by-case determination. It is the responsibility of the Office of Fair Housing and Equal Opportunity ("FHEO") and the reviewing Office of General Counsel ("OGC") office to ensure that credible and objective evidence exists to substantiate the existence of any claimed handicap before recommending a charge.

Moreover, as a number of the decisions in this field highlight, the mere fact that a person may be disabled by MCS and EI and makes demands on other people, be they employers or housing providers, does not mean that those demands must be met. The Act requires only that reasonable accommodations in rules, policies, practices, or services be made when such may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling unit, including public and common use areas. For example, over a year ago, my office determined that, while a complainant disabled by MCS was handicapped, the housing provider had reasonably met his duty to accommodate her and, accordingly, issued a Determination of No Reasonable Cause. Corcelli v. Gilbane Properties, Inc., (Case Nos. 01-90-0255-1-5, 01-90-0512-1) (Dec. 11, 1990) ("Corcelli") (Attachment A) discussed, infra, at 18. Whether a respondent in a case has met its duty to reasonably accommodate persons disabled by MCS and EI will turn on the facts and circumstances of that case.

I. Ordinary Allergies, Unlike MCS and EI, Generally Are Not Handicaps

Before turning to whether MCS and EI can fit within the definition of "handicap" under the Act, it is useful to define MCS and EI and distinguish these conditions from ordinary allergies. This memorandum uses the term MCS to refer to a condition that causes a person to have severe hypersensitive reactions to a number of different common substances. This memorandum uses the term EI to refer more generally to a condition that causes a person to have any type of severe allergic reaction to one or more substances.

At least one court has accepted the following definition for MCS:

[A]n acquired disorder characterized by recurrent symptoms, referable to multiple organ systems, occurring in response to demonstrable exposure to many chemically unrelated compounds at doses far below those established in the general population to cause harmful effects. No single widely accepted test of physiologic function can be shown to correlate with symptoms.

Ruether v. State, 455 N.W.2d 475, 476 n.1 (Minn. 1990) (quoting Cullen, The Worker with Multiple Chemical Sensitivities: An Overview, 2 Occupational Medicine: State of the Art Reviews 655, 657 (1987)).²

² The use of the term "severe" in describing both conditions restricts them both to a situation that "substantially limits one or more [of a] person's major life activities." 42 U.S.C. § 3602(h)(1) (emphasis added). See also 24 C.F.R. § 100.201 (1991).

³ There is, however, no definition of MCS that is accepted by all experts in the field. Hileman, Multiple Chemical Sensitivity, Chemical and Engineering News, July 22, 1991, at 26, 32. Indeed, some experts, including the American College of Physicians, take the position that the existence of MCS is not supported by any valid medical evidence. La-Z-Boy Chair Company v. Read, 1991 U.S. App. LEXIS 14137 (6th Cir. 1991) (unpublished opinion) (affirming district court ruling that plaintiff alleging MCS as a result of on-the-job exposure to chemicals had not established an "injury" compensable under Tennessee's worker's compensation law). In addition, at least one court has indicated its view that "clinical ecology has no standing in the scientific community" and has sided with those in the medical community who attribute the purported symptoms of MCS to a psychological problem or to other physical causes, rather than to chemical sensitivities. Lawson v. Sullivan, 1990 U.S. Dist. LEXIS 18758 (N.D. Ill. 1990) (magistrate's recommendation), adopted, 1991 U.S. Dist. LEXIS 1560 (N.D. Ill. 1991), discussed, infra, at 12. We note, however, that, under the Act, a handicap may be either physical or mental. Accordingly, even if MCS was a psychological or mental impairment, rather than a physical one, a person with MCS would still be afforded full protection under the Act, so long as that condition substantially limited one or more of his or her major life activities, or the person had a record of

Ordinary allergies, as opposed to MCS and EI, generally would not constitute a "handicap" because, in most cases, ordinary allergies do not substantially limit a major life activity. Indeed, the National Academy of Sciences ("NAS") defines MCS to exclude reactions to more common types of allergens.⁴ Thus, while we conclude that MCS or EI can be handicaps under the Act, ordinary allergies generally would not be such.⁵

The practical difference between a person with MCS and one with ordinary allergies is described in a decision which held that MCS is a "disability" under the Social Security Act:⁶

Everyone knows someone with an allergy. If allergic to eggs, don't eat eggs and you will be fine. If you do eat an egg, have some Kleenex available. But [the plaintiff with MCS] represents the extreme. These extreme cases in the past were either ignored, sent to a psychiatrist, let die, or treated for other ailments. It has only been recently that the medical profession itself has recognized the degree of the problem and the numbers of persons involved....

... A severe exposure [of the plaintiff to the elements to which she reacts] causes us to reach not for a Kleenex box but for the telephone to summon an ambulance and this has happened in the past.

Slocum v. Califano, No. 77-0298, slip op. (D. Haw. Aug. 27, 1979).

such an impairment, or was regarded as having such an impairment. 42 U.S.C. § 3602(h); 24 C.F.R. § 100.201.

⁴ For research purposes, the NAS defines MCS as follows:

Patients must have symptoms or signs related to chemical exposures at levels tolerated by the population at large. (Reactions to such well-recognized allergens as molds, dusts, and pollen are not included.) The symptoms must wax and wane with exposures and may be expressed in one or more organ systems. A chemical exposure associated with the onset of the condition doesn't have to be identified, and preexistent or concurrent conditions - such as asthma, arthritis, or depression - should not exclude patients.

Hileman, supra, at 32 (emphasis added).

⁵ But see, infra, note 31 at 17.

⁶ As discussed at more length, infra, at note 16, the Social Security Act's definition of disability is more limited than the Fair Housing Act's definition of handicap, i.e., the Fair Housing Act is broader and more inclusive.

Ordinary allergies are like a host of other common characteristics, which, although they may pose challenges to individuals with the characteristic, do not constitute handicaps because they either are not impairments or do not substantially impair major life activities. Judicial or other authority have found that the following characteristics do not constitute handicaps:

- left-handedness is not an impairment under Sections 501 and 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), 29 U.S.C. §§ 791 and 794, because it is physical characteristic, not a impairment - Torres v. Bolger, 781 F.2d 1134, 1138 (5th Cir. 1986), aff'g, 610 F. Supp. 593 (N.D. Tex. 1985) (ruling that left-handedness is not an impairment and does not substantially impair major life activities);
- shortness is not a disability or impairment under Wisconsin employment discrimination law - American Motors Corp. v. Labor and Industry Review Commission, 8 F.E.P. Manual 421:661 (No. 82-389) [cited in Torres v. Bolger, 610 F. Supp. 593, 596 (N.D. Tex. 1985)];
- "For purposes of the definition of 'disability' in section 3(2), homosexuality and bisexuality are not impairments and as such are not disabilities under this Act." - Section 511 of the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12211.

II. MCS and EI Generally Meet the Statutory and Regulatory Definition of Handicaps

Subsection 802(h) of the Act defines "handicap" as follows:⁷

(h) "Handicap" means, with respect to a person --

(1) a physical or mental impairment which substantially limits one or more of such person's major life activities,

(2) a record of having such an impairment, or

(3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)).

⁷ Except for inconsequential differences in phrasing, the Act's definition is identical to the definition in HUD's regulation, 24 C.F.R. § 100.201 (1991).

As under the Rehabilitation Act's definition of handicap, 29 U.S.C. § 706(6), a definition substantially similar to that in the Act,^{*} the determination of whether any particular condition constitutes a "handicap" necessarily involves a case by case determination of all facts and circumstances relevant to whether the condition meets the Act's definition. Forrisi v. Bowen, 794 F.2d 931, 933 (4th Cir. 1986) (case brought under the Rehabilitation Act); E.E. Black, Ltd. v. Marshall, 497 F. Supp. 1088, 1100 (D. Haw. 1980) (same). Those with MCS or EI generally attempt to meet the definition by virtue of paragraph (1) of the Act's definition, i.e., by maintaining that their condition constitutes a physical impairment which substantially limits one or more of their major life activities. As shown below, our understanding of the usual effects of MCS and EI is that persons with these conditions generally meet the Act's definition of persons with a "handicap."

A. Physical or Mental Impairment

The Act does not define its term, "physical or mental impairment," but the Department's regulations define that term as follows:

"Physical or mental impairment" includes:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as ... emotional or mental illness The term "physical or mental impairment" includes, but is not limited to, diseases and conditions as ... visual, speech and hearing impairments, ... [and] emotional illness

24 C.F.R. § 100.201.

^{*} As discussed, infra, Part IV at 15, Congress based the Act's definition of handicap on that contained in the Rehabilitation Act and intended the sweep of the Act's definition to be as broad as the then contemporary interpretations of the definition in the Rehabilitation Act.

As discussed at more length, *infra*, at Parts III, V, and VI, courts and administrative agencies (including HUD) have found persons with MCS and EI to have a physiological disorder or condition, which, upon exposure to certain substances, causes the person to suffer substantial impairment of various body systems. Listed below are some of the systems that we understand can be affected, as well as some of the ways each can be affected:

1. neurological - blurred vision and black spots, ear ringing, incoherent speech, and seizures;
2. musculoskeletal - muscle aches, fatigue, muscle spasms;
3. special sense organs - blurred vision, ear ringing;
4. respiratory (including speech organs) - incoherent speech, shortness of breath;
5. hemic - unusually high T-cell count;
6. digestive - pancreas damage;
7. immunological - extreme sensitivity to various chemicals which can be life threatening.

B. Major Life Activities

The Act does not define the term "major life activities," but HUD regulations define it as follows:

"Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

24 C.F.R. § 100.201.

People with MCS and EI can have one or more major life activities affected by their condition. We understand these to include, but not be limited to:

1. working - such persons may be disabled under the Social Security Act, 42 U.S.C. § 416(1)(1);
2. speaking - incoherent speech when exposed to chemicals;
3. breathing - extreme shortness of breath when exposed to chemicals;

4. caring for themselves; performing manual tasks - may be substantially impaired by chronic fatigue and the need to avoid exposure, they are often bed-ridden;
5. walking - loss of muscle control;
6. seeing - blurred vision and black spots;
7. hearing - ear ringing.
8. learning - blurred vision, ear ringing, seizures, and chronic fatigue, all of which may substantially impair a person's ability to learn.

C. Substantially Limited

Neither the Act itself nor HUD's implementing regulations define what it means to be "substantially limited" in a major life activity. Case law, however, provides some guidance.

The Fourth Circuit in Forrisi v. Bowen, 794 F.2d 931 (4th Cir. 1986), ruled that, under the Rehabilitation Act, in order for an impairment to substantially limit a major life activity, "the impairment must be a significant one." Id. at 933-34.

E.E. Black, Ltd. v. Marshall, 497 F. Supp. 1088 (D. Haw. 1980) ("Black"), ruled that a person who is disqualified from employment in his chosen field has a substantial handicap in employment and is substantially limited in his major life

⁹ The plaintiff in Forrisi was a utility systems repairer and operator with acrophobia (fear of heights). He did not allege that his acrophobia substantially limited his major life activities or that he had a history of such an impairment. Id. at 934. Rather, he alleged that he had a handicap because his employer regarded him as handicapped and had discriminated against him on that basis. The court found that the employer did not regard him as substantially limited in his major life activity of working and did not regard his condition to "foreclose generally the type of employment involved." Id. at 935. The court found that the employer "never doubted [the plaintiff's] ability to work in his chosen occupation of utility systems repair. The [employer] merely saw him as unable to exercise his acknowledged abilities above certain altitudes in this ... plant." Id. Thus, the court concluded that the plaintiff did not establish that his employer regarded him as handicapped and he did not have a handicap. As noted, supra, at 5, the definition of handicap under that act was the basis of and is substantially similar to that in the Fair Housing Act.

activity of working. Id. at 1099. In contrast, where a person is disqualified only from certain subfields of work, the determination of whether the impairment is substantial must be viewed in light of certain factors. Id. at 1101-02. These factors are:

1. the number of types of jobs from which the impaired individual is disqualified;
2. the geographical area to which the individual has reasonable access to find alternative employment; and
3. the individual's own job expectations and training.¹⁰

Id.

The Sixth Circuit in Jasany v. United States Postal Service, 755 F.2d 1244 (6th Cir. 1985), in discussing the "substantially limiting" requirement, stated that "[a]n impairment that affects only a narrow range of jobs can be regarded either as not reaching a major life activity or as not substantially limiting one."¹¹ Id. at 1249 note 3.

¹⁰ In Black, the court concluded that the plaintiff, an employee diagnosed with a congenital abnormality of the back which precluded heavy lifting, was handicapped under the Rehabilitation Act (which as noted, supra, at 5, contains a definition of handicap which Congress used as its basis for the definition in the Fair Housing Act), because he was unable to perform his job of carpenter's apprentice and was substantially impeded in achieving his career goal of becoming a journeyman.

¹¹ Jasany involved a plaintiff with strabismus ("crossed eyes") who was impaired in his visual acuity and could not perform his job as a mail sorting machine operator. The parties stipulated that the plaintiff's condition had never had any effect whatsoever on any of his activities, including his past work history and ability to carry out other duties at the post office apart from operation of the [mail sorting machine]. Id. at 1250. Based on this stipulation and the court's interpretation that an impairment which affects only a narrow range of jobs does not render a person substantially impaired in a major life activity, the court concluded that the plaintiff was not handicapped under the Rehabilitation Act. The court also stated in dictum that, even if the plaintiff were handicapped, he was not otherwise qualified for the job, because he was hired primarily to operate a mail sorting machine and the "post office was not required to accommodate [the plaintiff] by eliminating one of the essential functions of his job." Id. Once more, the definition of handicap in that act is the basis for and substantially similar to that in the Fair Housing Act.

For further cases, see also Wright v. Tisch, 45 F.E.P. 151 (E.D. Va. 1987) (BNA) (Postal service employee who was hypersensitive to dust was not handicapped under the Rehabilitation Act, because her condition only limited her from working in unusually dusty environments, not in ordinary working environments); Elstner v. Southwestern Bell Telephone Co., 659 F. Supp. 1328 (S.D. Tex. 1987) (telephone service technician with knee injury preventing him from climbing telephone poles using spikes, but not preventing him from climbing using a ladder, was not handicapped under the Rehabilitation Act,

Federal agencies¹² appear to have adopted a similar approach

because his condition did not substantially limit any activity except climbing telephone poles and did not disqualify him from any other jobs with the company), Aff'd, 863 F.2d 881 (5th Cir. 1988); Pridemore v. Legal Aid Society of Dayton, 625 F. Supp. 1171 (S.D. Ohio 1985) (job applicant with a "mild" case of cerebral palsy was not handicapped under the Rehabilitation Act, because his condition did not impair his ability to walk and talk or engage in any other major life activities, it was discernible only with the use of sophisticated diagnostic equipment, there was no indication that he ever suffered from any substantially limiting condition, and there was no indication that his prospective employer regarded him as suffering from a substantially limiting condition); Pridemore v. Rural Legal Aid Society of West Central Ohio, 625 F. Supp. 1180 (S.D. Ohio 1985) (same).

¹² The Merit Systems Protection Board ("MSPB") ruled in Joyner v. Department of Navy, 47 Merit Systems Protection Reporter ("MSPR") 596 (1991), that a Navy machinist was substantially limited in the major life activity of working because he was "severely limited in his ability to lift, carry, climb, work on ladders or scaffolding, stoop, twist, bend, push, and pull, and that he [was] incapable even of walking from a reserved handicapped parking lot outside the industrial area to his work site or to the shuttle bus that would take him to the work site." Id. at 599-600. While the employee could do some administrative work, since this work was not "the same type of employment as machinist work," he was substantially limited in his ability to work. Id. at 599. Nevertheless, the MSPB concluded that the Navy had not discriminated against the employee in violation of the Rehabilitation Act because he could not articulate any reasonable accommodation that would enable him to perform his job as a machinist, and permanent assignment to light duty was not required. Id. at 600-01. Thus, the employee was not a "qualified handicapped person" because there was no reasonable accommodation the Navy could or should have provided him in order to enable him to perform his job. Id. at 600.

Under somewhat different reasoning, the MSPB in Cohen v. Department of the Navy, 46 MSPR 369 (1990) ("Cohen"), upheld the removal of a personnel classification specialist from her job for being absent without leave, rejecting her claim that she was handicapped by reason of having "post-traumatic stress disorder due to occupational stress factors," a contention she raised to defend against the termination. The MSPB concluded that she did not establish a prima facie case of handicap discrimination under the Rehabilitation Act because her condition did not foreclose her generally from doing federal personnel work, and thus, she was not substantially impaired in her ability to work. Id. at 374. Rather, her impairment only precluded her from meeting the demands of the particular job at the particular location to which she was assigned. Id. Thus, the MSPB upheld the Navy's removal of her from her job for being absent without leave, and the Navy's refusal to reassign her to another job.

The Equal Employment Opportunity Commission ("EEOC") in Gomez v. Aldridge, Secretary of the Air Force, Pet. No. 0389007 (Jan. 17, 1989), interpreted the "substantial limitation" language of the Rehabilitation Act similarly to Cohen. The EEOC concluded that an employee who was hypersensitive to paint fumes and other toxic chemicals was not "handicapped" under 29 C.F.R. § 1613.702(a), the EEOC's Rehabilitation Act regulations, because his hypersensitivity did not disqualify him from other jobs and "drastically reduce his employability;" and thus, he was not substantially impaired in the major life activity of working. Slip op. at 4-5.

The decision of the Office of Federal Contract Compliance Programs ("OFCCP") of the Department of Labor, In the Matter of Office of Federal

to the "substantially limited" requirement, as have state courts¹³.

Persons with MCS and EI may be substantially limited in major life activities due to their handicap. For such persons, exposure to a variety of common substances may cause them significant limitations to their major life activities, such as those listed, *supra*, at Part IIB. Moreover, due to the frequency that ordinary living normally brings people into contact with the commonly found substances to which persons with MCS and EI typically react, persons with these disabilities may be severely constrained in their daily living and must make major adjustments to avoid exposure. Since it is critical that people with MCS and EI minimize their exposure to common substances found in or near most housing facilities, they generally face a significantly limited choice of housing.

III. Case Precedent Recognizes MCS and EI as Handicaps

The weight of judicial precedent supports the conclusion that MCS and EI can be handicaps.

A. Federal Case Law Recognizes MCS and EI as Handicaps

Vickers v. Veterans Administration, 549 F. Supp. 85, 86-87 (W.D. Wash. 1982), held that a Veterans Administration ("VA") employee who was hypersensitive to tobacco smoke was handicapped

Contract Compliance Programs v. Shuford Mills, Inc., Case No. 80-OFCCP-30 (Recommended Decision and Order, May 26, 1981), also interpreted the "substantial limitation" language of the Rehabilitation Act. As summarized in Handicapped Requirements Handbook (Federal Programs Advisory Service) App. IV, para. 1005, that decision ruled:

[A] person is not substantially limited or regarded as substantially limited when as here, that person is already gainfully employed" and is denied transfer to a lower paying and more strenuous job; that job would not be a more favorable progression or advancement; and the individual has not been confined to any particular trade or business and has not had any apparent restriction to his employment opportunities. Since the symptoms [the plaintiff] complained of were mild and temporary and did not appear to limit his ability to function, the judge determined that [the plaintiff] was not a handicapped person under the Act or regulations.

¹³ E.g., Salt Lake City Corp. v. Confer, 674 P.2d 632 (Utah 1983) [under Utah Anti-Discrimination Act, the inability, because of spondylolysis (back disability), to do one particular job for one particular employer is not a substantial impairment of a major life activity]. The Utah Act defined "handicap" to mean "a physical or mental impairment which substantially limits one or more major life activity [sic]." Utah Code Ann. § 34-35-2(14) (1979).

under the Rehabilitation Act. The court ruled that the ability to work where one will be subject to an ordinary amount of smoke is a major life activity. *Id.* at 87. The court specifically found that the plaintiff had a physical impairment that substantially limited his ability to work in an environment that was not completely smoke free, and thus, he was handicapped.¹⁴

Rosiak v. Department of the Army, 679 F. Supp. 444 (M.D. Pa. 1987), aff'd, 845 F.2d 1014 (3d Cir. 1988), held that a carpentry worker who was hypersensitive to "hydrocarbon-type fumes or dust," including those from contact cement, was handicapped under the Rehabilitation Act due to his hypersensitivity.¹⁵

Kouril v. Bowen, 912 F.2d 971, 974 (8th Cir. 1990), held that a woman with MCS was disabled under the Social Security Act, 42 U.S.C. § 416(i)(1).¹⁶ She suffered numbness in the legs,

¹⁴ The court concluded, however, that the VA had made "reasonable accommodations" to the plaintiff's handicap. These included: installing additional ceiling vents at agency expense, offering to install a floor-to-ceiling partition with a door, offering to assign him to a different job involving outdoor work, allowing him to move his desk to another part of the office closer to a window, allowing him to seek a voluntary agreement with those in his office and adjacent offices not to smoke in their offices (which he was able to obtain), and allowing him to use an air purifier in the office. *Id.* at 88. The court found that no further accommodation was required. *Id.*

¹⁵ The plaintiff sued the Army for improperly terminating his employment. While finding the plaintiff to be handicapped, the court concluded that he was not otherwise qualified for the position, because, despite the employer's efforts to accommodate him, the plaintiff was still unable to perform his job. *Id.* at 451. The accommodations the employer made included working closely with the plaintiff, carefully considering him for alternative jobs, and offering him those alternative jobs for which he was qualified. Plaintiff rejected all other positions he was offered, could not suggest an alternative job he could do, and refused to try doing his job wearing the respirator his employer gave him. The court concluded that, while the plaintiff was handicapped, the agency made every reasonable effort to accommodate him, yet was unable to do so. Thus, the plaintiff was not an otherwise "qualified handicapped employee." *Id.*

¹⁶ 42 U.S.C. § 416(i)(1) defines "disability" for purposes of disability benefits under the Social Security Act as follows:

[T]he term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness

If a person has a "disability" under the Social Security Act, he or she should have a "handicap" under the Fair Housing Act, because the former definition is a more limited definition than the latter. In contrast to the Social Security Act's definition of "disability," neither the Fair Housing Act

dizziness, light headedness, headaches, nausea, and various skin rashes and sores when exposed to common chemicals, such as ink, perfume, tobacco smoke, photocopier odors, engine exhaust fumes, new carpet, new clothes, and hydrocarbons. The court found her "complex allergy state" to require substantial restrictions in her daily activities and interfere with her ability to engage in substantial gainful activity. 912 F.2d at 976.¹⁷

Kornock v. Harris, 648 F.2d 525, 527 (9th Cir. 1980), involved a truck driver, diagnosed as having severe allergies to environmental pollutants and bronchial asthma, and, who, as a consequence, suffered disabling respiratory attacks. The court ruled that he was disabled from substantial gainful activity under the Social Security Act, and, thus, his widow was entitled to collect his Social Security disability benefits.

On the other hand, Lawson v. Sullivan, 1990 U.S. Dist. LEXIS 18758 (N.D. Ill. 1990) (magistrate's decision), adopted, 1991 U.S. Dist. LEXIS 1560 (N.D. Ill. 1991), affirmed a decision of the Secretary of Health and Human Services, which denied the claimant Social Security disability benefits based on a failure to produce adequate, objective, clinical evidence supporting her complaints of incapacitating migraine headaches, allegedly brought about by exposure to various common chemicals.¹⁸

nor the Rehabilitation Act requires that an individual be unable to engage in any substantial gainful activity in order to be handicapped. Also, under the Fair Housing Act and the Rehabilitation Act, the handicap does not need to be one that can be expected to result in death. Nor does it need to be one which has lasted or can be expected to last for any particular duration. Some courts, however, have ruled that some conditions which temporarily disable a person are not handicaps within the meaning of these Acts, because the limitation to major life activities is temporary, and thus, not "substantial." See Handicapped Requirements Handbook (Federal Programs Advisory Service) at 220:3 (referencing Section 504 cases).

¹⁷ The court remanded the case to the district court, with directions to remand it to the Secretary of Health and Human Services to determine whether the woman could perform other employment, or was disabled from working. Id.

¹⁸ The court rejected the claimant's claim of being disabled by MCS, finding that there was a lack of evidence to establish (1) that she actually felt the pains she allegedly had, (2) what the origin of her alleged pains was, and (3) that the alleged pains disabled her from working. In making that ruling, the court rejected the claimant's testimony of her pains and the testimony of claimant's doctors. Instead, the court sided with medical professionals who testified espousing long-established, traditional allergy and immunology theories which the court interpreted as contradicting the claimant's claim of being disabled.

B. State Case Law Recognizes MCS and EI as Handicaps

Pennsylvania, California, and Ohio state courts have interpreted their state civil rights statutes prohibiting discrimination against the handicapped to apply to persons with MCS and EI. We have been unable to find any state court holding to the contrary.

Most noteworthy, because it involves housing discrimination, is a case interpreting the Pennsylvania Human Relations Act ("Pennsylvania Act").¹⁹ Lincoln Realty Management Co. v. Pennsylvania Human Relations Commission, 598 A.2d 594 (Pa. Commw. 1991) ("Lincoln"). In that case, a Pennsylvania trial court affirmed, in part, the decision of the Pennsylvania Human Relations Commission. The court affirmed, without analysis of this issue, the finding that the plaintiff, a tenant unable to tolerate the presence of various chemical compounds (including certain pesticides and herbicides), was handicapped under the Pennsylvania Act.²⁰ Id. at 597, 601.

The California Court of Appeals held in County of Fresno v. Fair Employment and Housing Commission of the State of California, 226 Cal. App. 3d 1541, 1550, 277 Cal. Rptr. 557, 563 (Cal. App. 5th Dist. 1991), that the state human relations commission did not abuse its discretion in determining that hypersensitivity to tobacco smoke,²¹ was a handicap under the California Fair Employment and Housing Act ("California Act").²²

¹⁹ The Pennsylvania Act does not define handicap. However, 16 Pa. Code § 44.4 (1989), Pennsylvania's regulations governing discrimination on the basis of handicap or disability, contain a definition of handicap that is substantially similar to that in subsection 802(h) of the Fair Housing Act and HUD's implementing regulations, 24 C.F.R. § 100.201. The Pennsylvania hearing examiner applied the state's definition in his decision. Atkinson v. Lincoln Realty Management Company, Docket No. H-4358 at 30 (Aug. 28, 1990).

²⁰ The court affirmed in part and remanded in part the Commission's order regarding the accommodations the housing provider was required to provide. The court affirmed the order insofar as it required the defendant to give notice to the plaintiff of pesticide application and painting and to permit the plaintiff to modify her apartment at her own expense by installing a kitchen ceiling fan and a washer and dryer. Id. at 600-01. The court vacated the rest of the order's required accommodations, some of which the complainant had not requested.

²¹ We believe that hypersensitivity to tobacco smoke, if it substantially impaired one or more of a person's major life activities, would be a handicap under the Act. See Vickers v. VA, discussed, supra, at 10-11.

²² The California Act defines a "physical handicap" to include "impairment of sight, hearing, or speech, or impairment of physical ability because of ... loss of function or coordination, or any other health impairment which requires special education or related services." Cal. Government Code § 12926(h).

While this case involved employment discrimination, the California Act's definition of handicap applies equally to housing. Thus, the holding that hypersensitivity to tobacco smoke qualifies as a handicap would apply in housing discrimination cases also.

In Kallas Enterprises v. Ohio Civil Rights Commission, 1990 Ohio App. LEXIS 1683 (Ohio Ct. App. May 2, 1990), the Court of Appeals of Ohio, citing Vickers, discussed, supra, at 10-11, ruled that "occupational asthma" and "a hypersensitivity to [rustproofing] chemicals," are handicaps within the meaning of the Ohio Civil Rights Act ("Ohio Act"), Ohio Rev. Code § 4112 et seq.²³ The court affirmed the trial court's ruling that the plaintiff was illegally discharged because of his handicap and affirmed the trial court's reinstatement order.

In Kent State University v. Ohio Civil Rights Commission, 64 Ohio App. 3d 427, 581 N.E.2d 1135 (1989), a different district of the Court Appeals of Ohio held in favor of a person with laryngeal stridor with laryngospasm, diagnosed as a condition making her unable to breathe when subjected to pesticides, cleaning solutions, natural gas, asphalt, auto exhaust, cigarette smoke, hair spray, cosmetics, rubber products, petrochemicals, and other common substances. 581 N.E.2d at 1137. The court found that her condition was a handicap under the Ohio Act.²⁴

The court specifically rejected the defendant's contention that hypersensitivity to smoke is merely an "environmental limitation" but not a physical handicap. The court stated that, while to most people tobacco smoke may be merely irritating, distasteful, or discomforting, someone is physically handicapped if he or she suffers from a respiratory disorder and his or her ability to breathe is severely limited by tobacco smoke. 225 Cal. App. 3d at 1550. The court found that, although the defendants had provided numerous accommodations to the plaintiffs, the defendant did not go far enough, and thereby failed to reasonably accommodate them.

²³ The Ohio Act defines a handicap as:

[A] medically diagnosable, abnormal condition which is expected to continue for a considerable length of time ... which can reasonably be expected to limit the persons' functional ability ... so that he cannot perform his everyday routine living and working without significantly increased hardship and vulnerability to what are considered the everyday obstacles and hazards encountered by the non-handicapped.

Ohio Rev. Code § 4112.01(A)(13).

²⁴ The court made this finding even though it was uncertain whether the cause of the complainant's condition was "an organic reaction to certain sensitivities or allergies" or "a psychological reaction to odors," see note 3 (last two sentences), supra, at 2-3, and even though she only faced hardship in her day-to-day life at work, but not at home where she was able to minimize her exposure to the substances to which she reacted adversely. Id. at 1139-

IV. Legislative History Supports the Conclusion that MCS and EI Can Be Handicaps.

The Act's legislative history also demonstrates that Congress intended that the Act's definition of handicap be broad enough to include MCS and EI. Congress intended that the term "handicap," as used in the Act, be interpreted consistently with judicial interpretations of the term "handicap," as used in the Rehabilitation Act. In the preamble to the regulations implementing the Act, HUD noted "the clear legislative history indicating that Congress intended that the definition of 'handicap' be fully as broad as that provided by the Rehabilitation Act." 24 C.F.R. Subtitle B, Ch. 1, Subch. A, App. 1 at 704 (1991).²⁵ To support this conclusion, the preamble cited portions of the House Report and floor debate on the Act which reflected Congress's desire that the two definitions be interpreted consistently.²⁶ Before Congress passed the Fair Housing Amendments Act, lower federal courts had interpreted the Rehabilitation Act to cover MCS and EI as handicaps.²⁷

Statutory construction principles lead us to conclude that, because Congress used substantially the same definition of handicap in the Act as it did in the Rehabilitation Act, Congress intended chemical hypersensitivity to be a handicap under the Act, as courts at that time had determined it to be under the Rehabilitation Act. It is a generally accepted principle of statutory construction that where the judiciary has given "contemporaneous and practical interpretation" to "an expression" contained in a statute, and the legislature adopts the expression in subsequent legislation, the judicial interpretation is "prima

40. The court concluded that her employer failed to make reasonable accommodations to her handicap by refusing to move her office temporarily to another part of the building or to another building and by failing to provide adequate advance warning when it would use cleaning solutions or pesticides in the building. Id. at 1142.

²⁵ HUD rejected comments suggestions that it delete paragraphs (a), (b), (c), and (d) of the definition of "handicap" in HUD's proposed regulation, which were identical to those found in 24 C.F.R. § 100.201 (1991).

²⁶ 24 C.F.R. at 704, citing, H.R. Rep. No. 711, 100th Cong., 2d Sess., at 22 (1988); 134 Cong. Rec. S10492 (daily ed. Aug. 1, 1988) (statement of Sen. Chafee); Id. at H4689 (daily ed. June 23, 1988) (statement of Rep. Pelosi); Id. at H4612 (daily ed. June 22, 1988) (statement of Rep. Schroeder).

²⁷ See, e.g., Vickers v. Veterans Administration, 549 F. Supp. 85, 86-87 (W.D. Wash. 1982), discussed, supra, at 10-11, and Rosiak v. Department of the Army, 679 F. Supp. 444 (M.D. Pa. 1987), aff'd, 845 F.2d 1014 (3d Cir. 1988), discussed, supra, at 11.

facie evidence of legislative intent." This principle "is based on the theory that the legislature is familiar with the contemporaneous interpretation of a statute." Sutherland Stat. Const. § 49.09 (4th ed. 1984) at 400. The Supreme Court has applied this principle to interpreting civil rights statutes. Cannon v. University of Chicago, 441 U.S. 677 (1979) ("Cannon")²⁸ and Lorillard, A Division of Loew's Theatres, Inc. v. Pons, 434 U.S. 575 (1978) ("Lorillard").²⁹

In addition, the Act's legislative history generally demonstrates that Congress intended that the Act's definition of handicap be interpreted broadly. During consideration of the Fair Housing Amendments Act, Congress considered proposals to limit the category of "handicaps" to more traditionally recognized ones, such as those affecting only sight, hearing, walking, or living unattended; Congress rejected those proposals. For example, Senator Hatch proposed a more restrictive definition of the term handicap in S. 867, 100th Cong., 1st Sess. See Fair Housing Amendments Act of 1987: Hearings on S. 558 Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary, 100th Cong., 1st Sess. 520-22, 523 (1987) (statement of Bonnie Milstein, former Deputy Assistant General Counsel for Civil Rights in Departments of HEW and HHS). By adopting the definition it did, Congress rejected the more restrictive proposals. Interpreting the Act's definition to include persons with MCS and EI is consistent with that Congressional intent.

²⁸ Cannon involved the interpretation of Title IX of the Education Amendments of 1972. Subsection 901(a) of those Amendments, 20 U.S.C. § 1681(a), prohibits sex discrimination in educational institutions. The Court concluded that Congress intended that Title IX provide a private right of action, in part, because Title IX was patterned after Title VI of the Civil Rights Act of 1964. Legislative history revealed that the drafters of Title IX explicitly indicated that it should be interpreted and enforced in the same manner as Title VI. Even though neither statute explicitly provided for a private cause of action, the Court relied on the fact that lower federal courts had already construed Title VI to create a private remedy when Title IX was enacted in concluding that Congress intended a private right of action under Title IX as well. Id. at 696-98.

²⁹ Lorillard involved the interpretation of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621 et seq. The Court concluded that Congress intended a right to a jury trial in private actions under ADEA, in part, because subsection 7(b) of ADEA, 29 U.S.C. § 626(b), states that ADEA is to be enforced in accordance with the "powers, remedies, and procedures" of the Fair Labor Standards Act ("FLSA"). Even though neither statute explicitly provides for a right to a jury trial, the Court relied on the fact that lower federal courts had already construed FLSA to create a right to a jury trial when ADEA was enacted in concluding that Congress intended a right to a jury trial under ADEA as well. Id. at 580-81.

V. Other Federal Agencies Recognize MCS and EI as Handicaps

At least two other Federal agencies, the Social Security Administration ("SSA") and the Department of Education ("DOE"), recognize that MCS and EI can be handicaps. In addition, the Civil Rights Division of the Department of Justice has informed us that it believes MCS and EI can be handicaps under the Fair Housing Act.

As discussed, supra, at Part IIIA, two Circuit Courts of Appeals have ruled that MCS and EI are "disabilities" under the Social Security Disability Act.³⁰ An increasing number of SSA administrative law judges are "becoming aware" of these disabling conditions. Matthew Bender, Social Security Practice Guide, vol. 2, § 14.03[8] at 14-49 (1991). If a person is disabled under the Social Security Act, a fortiori, he or she is handicapped under the Fair Housing Act, because the former definition is a more limited definition than the latter.³¹

DOE has issued two agency letters of finding under the Rehabilitation Act concluding that MCS and EI can be handicaps. In San Diego (Cal.) Unified School District, 1 National Disability Law Reporter ("NDLR") para. 61, p. 311 (May 24, 1990), DOE concluded that a school district violated the Rehabilitation Act by refusing to reasonably accommodate a school bus driver who was chemically sensitive to petrochemical fumes. In that case, the school district refused to allow the driver to wear a respirator while driving. DOE concluded that the bus driver was handicapped and that the accommodation he requested was reasonable. In Montville (Conn.) Board of Education, 1 NDLR para. 123, p. 515 (July 6, 1990), DOE concluded that a guidance counselor with MCS was handicapped under the Rehabilitation Act. DOE concluded, however, that the school district had provided reasonable accommodations to the counselor.³²

³⁰ On the other hand, the Secretary of Health and Human Services appears reluctant to allow disability benefits to claimants alleging to be disabled by MCS. Contrary to the two Circuit Courts, one District Court has approved that position and accepted the views of the portion of the medical profession which does not accept the existence of MCS as a disability. Lawson v. Sullivan, 1990 U.S. Dist. LEXIS 18758 (N.D. Ill. 1990) (magistrate's decision), adopted, 1991 U.S. Dist. LEXIS 1560 (N.D. Ill. 1991).

³¹ See, supra, note 16, for comparison of the Social Security Act's definition of "disability," with the definition of "handicap" under the Fair Housing Act and the Rehabilitation Act.

³² In addition, in Windsor (Conn.) Public Schools, 17 Education for the Handicapped Law Report 692, Complaint No. 01-90-1131 (Jan. 18, 1991), DOE concluded in an agency letter of findings, without analysis, that asthma and allergies were handicaps under the Rehabilitation Act. DOE found, however, that the school district did not discriminate by failing to repair a school's air cooling system that affected only air temperature.

In addition, the Merit Systems Protection Board ("MSPB") has suggested that, at least in some circumstances, severe chemical sensitivities could be a handicap under the Rehabilitation Act.³³

VI. HUD's Prior Interpretations Have Recognized That MCS and EI Can Be Handicaps

On several occasions, HUD, including OGC and FHEO, has recognized that MCS and EI can be handicaps under Section 504 of the Rehabilitation Act and subsection 802(h) of the Fair Housing Act. OGC, Fair Housing Division, issued a determination, authorized by the General Counsel, in another fair housing case, Corcelli v. Gilbane Properties, Inc., (Case Nos. 01-90-0255-1-5, 01-90-0512-1) (Dec. 11, 1990) ("Corcelli") (Attachment A) stating that the complainant, a person suffering from environmental illnesses immune dysfunction syndrome and chronic fatigue, was handicapped under the Act. In Corcelli, medical evidence substantiated that the complainant was hypersensitive to common chemicals such as pesticides, petroleum products, perfumes, exhaust fumes, fresh paint, pine, soaps, chemical spraying of lawns, and most strong odors. When exposed to these substances, her reaction was severe or even life threatening. Based on this information, HUD found that the complainant's condition was a handicap and that the Act's provision on reasonable accommodations was fully applicable.³⁴ Corcelli at 3.

Even before OGC issued the Corcelli determination, HUD had stated that MCS was a handicap under Section 504 of the Rehabilitation Act, entitling those with the disability to reasonable accommodations. See Oct. 26, 1990 letter from Timothy L. Coyle, Assistant Secretary for Legislation and Congressional Relations to Senator Frank R. Lautenberg (Attachment B). Since

³³ In Miller v. United States Postal Service, 43 MSPR 473 (1990), the MSPB ruled that a Postal Service employee who suffered from severe chemical sensitivity to dust, diagnosed as allergic rhinitis, was not substantially limited in a major life activity because, while she was unable to be a Distribution Clerk, the particular job to which she was assigned, she had "no history of significant impairment from her allergies either on or off the job" and her condition "did not significantly affect any prior employment." Id. at 478 and 479 n.7. Thus, the MSPB concluded that the individual was not handicapped under the Rehabilitation Act and the EEOC's regulations at 29 C.F.R. § 1613.702(a). The decision left open the possibility, however, that in cases where such chemical sensitivity does significantly impair an individual, he or she could be handicapped.

³⁴ HUD issued a determination of no reasonable cause, however, because the respondents had provided the complainant reasonable accommodations. Id. at 3.

Corcelli, HUD has continued to reaffirm its position that MCS and EI are or can be handicaps. For example, the FHEO provided all regional FHEO Directors a draft technical guidance memorandum dated June 6, 1991, stating that persons disabled by MCS and EI are handicapped within the meaning of the Fair Housing Act and Section 504. See Draft Technical Guidance Memorandum (Attachment C). In addition, HUD's recent report to Congress, written by the Assistant Secretary for FHEO and cleared by the Secretary, listed, as a handicap discrimination case, one involving the "refusal to delay fumigation to permit a temporary absence for an individual with chemical sensitivities." Report to the Congress Pursuant to Section 808(e)(2) of the Fair Housing Act (1990): The State of Fair Housing (Nov. 1991) at 5 (Attachment D).

As explained above, persons with MCS and EI generally will meet the statutory and regulatory definitions of persons with a "handicap." In addition, HUD's interpretation to date is fully consistent with case precedent, the interpretations of other Federal agencies, and the Act's legislative history.

VI. Conclusion

MCS and EI can be handicaps under the Act. This position is consistent with the statutory language, the weight of judicial authority, the interpretation of other Federal agencies, and the Act's legislative history. HUD also has been consistent in articulating this position on prior occasions. Thus, HUD's current interpretation seems correct, and there appears to be no compelling reason to change it now.

Attachments



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

SPECIAL ATTENTION OF:

Regional Directors; State and Area
Coordinators; Public Housing Hub
Directors; Program Center Coordinators;
Troubled Agency Recovery Center Directors;
Special Applications Center Director;
Public Housing Agencies;
Housing Choice Voucher/Section 8 Public
Housing Agencies; Resident
Management Corporations.

NOTICE PIH 2006-13 (HA)

Issued: March 8, 2006

Expires: March 31, 2007

Cross Reference: Notice
PIH 2003-31 (HA)

Subject: Non-Discrimination and Accessibility for Persons with Disabilities

1. PURPOSE: The purpose of this Notice is to remind recipients of Federal funds of their obligation to comply with pertinent laws and implementing regulations which mandate non-discrimination and accessibility in Federally funded housing and non-housing programs for persons with disabilities.

Additionally, this Notice provides information on key compliance elements of the relevant regulations and examples and resources to enhance recipients' compliance efforts. However, specific regulations must be reviewed in their entirety for full compliance.

2. APPLICABILITY: This Notice applies to all programs and activities receiving federal financial assistance either directly or indirectly from the Office of Public and Indian Housing.

Federal financial assistance and programs or activity are both defined very broadly. See 24 CFR 8.3 for the regulatory definitions.

Contractors or other agents of PHAs performing covered work or conducting covered activities on behalf of PHAs are subject to the requirements of this Notice.

3. BACKGROUND: Although the Department is aware that many HUD recipients are doing an excellent job of providing accessibility in their programs for persons with disabilities, it has been brought to the Department's attention that other HUD recipients may not be in compliance with the subject laws and implementing regulations. As part of an effort to achieve maximum compliance, this Notice will serve to emphasize the importance of compliance.

4. NOTIFICATIONS: It is recommended that public housing agencies (PHAs) and other recipients of Federal PIH funds provide this Notice to all current and future contractors, agents and housing choice voucher program owners participating in covered programs/activities or performing work covered under the above subject legislation and implementing regulations.

I. STATUTORY/REGULATORY REQUIREMENTS

Some statutory and regulatory provisions overlap others. Where there is a conflict, the most stringent provision applies including any state or local laws/regulations/codes which may be more stringent than Federal requirements.

A. SELF-EVALUATIONS/NEEDS ASSESSMENTS/TRANSITION PLAN

1. Section 504 of the Rehabilitation Act of 1973 (Section 504)¹; Title II of the Americans with Disabilities Act of 1990 (ADA)²:
Initially, with the issuance of the Section 504 implementing regulations at 24 CFR Part 8 on June 2, 1988, PHAs were required to conduct needs assessments and develop transition plans to address the identified needs of residents and applicants with disabilities. The transition plan and the needs assessment are required to be available for public review pursuant to 24 CFR § 8.25(c). *See also* 24 C.F.R. § 8.51.

The Department's Office of Fair Housing and Equal Opportunity (FHEO) will continue, as a matter of routine, to request copies of any self-evaluations, needs assessments or transition plans in every compliance review and complaint investigation conducted of a HUD recipient. These documents may also be reviewed by other HUD offices in conjunction with funding applications and addressing non-compliance issues that may arise. In addition, effective January 26, 1992, Title II of the ADA required PHAs to conduct a self-evaluation of their current services, policies and practices. *See* 28 CFR §§ 35.105 and 35.150 (d).

PHA-Plan regulations pursuant to the U.S. Housing Act of 1937 at 24 CFR § 903.7(a)(1)(ii) require the submission of a statement addressing the housing needs of low-income and very low-income families, including such families with disabilities, who reside in the jurisdiction served by the PHA and families who are on the public housing and housing choice voucher program waiting list.

Additionally, to ensure continued compliance with Section 504 and Title II of the ADA, PHAs are encouraged to conduct needs assessments and self-evaluations, at least yearly, working with persons/residents with disabilities and local advocacy groups for persons with disabilities. (*See* 24 CFR §§ 8.25(c) and 8.51 for additional information). Transition Plans should be updated as a result of such needs assessments and self-evaluations. The Transition Plan must be made available for public review.

¹ 29 U.S.C. § 794; 24 C.F.R. Part 8.

² 42 U.S.C. §§ 12101 et seq.; 28 C.F.R. Part 35.

B. SECTION 504/24 CFR 8 – MAJOR PROVISIONS

[See <http://www.hud.gov/offices/fheo/disabilities/504keys.cfm>;

See also http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr8_00.htm]

1. New Construction [24 CFR § 8.22 (a) and (b)]. A minimum of 5 percent of the total dwelling units, or at least one unit (whichever is greater), must be made accessible for persons with mobility impairments, unless HUD prescribes a higher number or percentage pursuant to 24 C.F.R. § 8.23 (b)(2). An additional minimum of 2 percent of the units, or at least one unit (whichever is greater) must be made accessible for persons with hearing or vision impairments. In circumstances where greater need is shown, HUD may prescribe higher percentages than those listed above. [See 24 CFR 8.22(c).] Accessible units must be on an accessible route from site arrival points and connected by an accessible route to public and common use facilities located elsewhere on the site. Also, see visitability recommendations in Section I. of this Notice.
2. Substantial Alterations [24 CFR § 8.23 (a)]. If alterations are undertaken to a project that has 15 or more units and the cost of the alterations is 75 percent or more of the replacement cost of the completed facility, then the provisions of 24 CFR 8.22 (a) and (b) for new construction apply, with the sole exception that load bearing structural members are not required to be removed or altered.
3. Other Alterations [24 CFR § 8.23 (b)]. When other alterations are undertaken, including, but not limited to modernization, such alterations are required to be accessible to the maximum extent feasible, up until a point where at least 5 percent of the units in a project are accessible unless HUD prescribes a higher number or percentage pursuant to 24 CFR § 8.23 (b)(2). PHAs should also include up to 2 percent of the units in a development accessible for persons with hearing and vision impairments. See 24 CFR. § 8.32 (c) for exception regarding removing or altering a load-bearing structural member. (Note: these exceptions do not relieve the recipient from compliance utilizing other units/buildings/developments or other methods to achieve compliance with Section 504.)
4. Adaptable Units: Section 504 permits recipients to construct or convert adaptable units. A dwelling unit that is on an accessible route, as defined by Section 504 and UFAS, and is adaptable and otherwise in compliance with the standards set forth in 24 C.F.R. § 8.32 is “accessible”. Adaptable or adaptability means the ability of certain elements of a dwelling unit, such as kitchen counters, sinks and grab bars to be added to, raised, lowered, or otherwise altered to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disabilities. An accessible route is defined as a continuous, unobstructed UFAS-compliant path as prescribed in 24 C.F.R. §§ 8.3 and 8.32; UFAS. § 4.3. See 24 C.F.R. §§ 8.3 & 8.32; UFAS §§ 4.34.3-4.34.6.

Adaptable units may be appropriate when the PHA has no immediate demand for accessible units since adaptable units may be more marketable to families without disabilities. [NOTE: A unit that meets the requirements of the Fair Housing Act Design & Construction requirements is NOT equivalent to an Adaptable or Accessible Unit as defined by UFAS and Section 504.]

5. Uniform Federal Accessibility Standards (UFAS) 24 C.F.R. § 8.32 –
[See <http://www.access-board.gov/ufas/ufas-html/ufas.htm>]

The applicable accessibility standards for purposes of complying with Section 504 are the Uniform Federal Accessibility Standards (UFAS). See 24 C.F.R. §§ 8.3; 8.32 and Appendix A to 24 C.F.R. § 40. Under 24 C.F.R. § 8.32, compliance with UFAS shall be deemed to comply with the accessibility requirements of 24 C.F.R. §§ 8.21, 8.22, 8.23 and 8.25. Departures from the technical and scoping requirements of UFAS are permitted where substantially equivalent or greater access and usability of the building is provided. See 24 C.F.R. § 8.32 (a). The Federal Access Board promulgates the UFAS. See <http://www.Access-Board.gov>. See also Section I.C., below.

NOTE: On July 23, 2004, the U.S. Access Board issued new Americans with Disabilities Act (ADA) and Architectural Barriers Act (ABA) Guidelines which cover new construction and alteration of a broad range of facilities in the private and public sectors and serve as the basis for enforceable accessibility standards issued by Federal Agencies, including HUD. These Guidelines, once adopted by HUD, will replace the current Uniform Federal Accessibility Standards (UFAS). However, they will only apply to new construction and planned alterations and generally will not apply to existing facilities except where altered. HUD recipients are not required to comply with the new guidelines until such time as HUD adopts them as enforceable standards. Information about the new guidelines may be obtained from the Access Board website at <http://www.access-board.gov/ada-aba.htm>.

6. Reasonable Accommodations [24 CFR §§ 8.20, 8.21, 8.24 and 8.33]. PHAs and other recipients of Federal financial assistance are required to make reasonable adjustments to their rules, policies, practices and procedures in order to enable an applicant or resident with a disability to have an equal opportunity to use and enjoy the housing unit, the common areas of a dwelling or participate in or access programs and activities conducted or sponsored by the PHA and/or recipient. When a family member requires a policy modification to accommodate a disability, PHAs must make the policy modification unless doing so would result in a fundamental alteration in the nature of its program or an undue financial and administrative burden. If providing such an accommodation would result in an undue financial and administrative burden, the PHA is required to take any other action(s) that would not result in an undue burden financial and administrative burden. (See also discussion of reasonable accommodation on Screening/Reasonable Accommodations in Section 2F(6) and reasonable accommodation under the Fair Housing Act in Section 1E(3). Note: A recipient is not required to accommodate an individual with a disability by modifying a rule or policy that is required by statute. Such a change would be a fundamental alteration of a program.

For example:

A PHA that does not allow residents to have pets must modify its policies and allow a tenant with a disability to have an assistance animal if the animal is needed to provide the resident with a disability an equal opportunity to use and enjoy the housing

- If the recipient provides transportation to PHA sponsored/funded functions or activities then a recipient must ensure that accessible transportation is provided to accommodate person with disabilities and their aides including the reasonable accompaniment of relative(s) or acquaintance(s).

PHAs and other recipients of Federal financial assistance are also required to provide reasonable accommodations to tenants and applicants with disabilities who need structural modifications to existing dwelling units and public use and common use areas in order to make effective use of the recipient's program. Under the regulations, this obligation may be met either by making and paying for requested structural modifications or by using other equally effective methods. See 24 CFR §§ 8.20, 8.21(c), 8.24. However, when the PHA is accommodating a resident's disability-related needs without making structural changes, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. See 24 CFR §§ 8.21 (c), 8.24 (b) for a variety of suggested, but not all inclusive compliance methods.

As with other requested reasonable accommodations, PHAs and other recipients are not required to provide requested structural modifications if doing so would result in a fundamental alteration in the nature of the program or an undue financial and administrative burden. However, the PHA or other recipient is required to provide any other reasonable accommodation that would not result in an undue financial and administrative burden on the particular recipient and/or constitute a fundamental alteration of the program

. For example:

A PHA may be required to pay for and install a ramp to allow a resident who is a wheelchair user to have access to a dwelling unit that has a step at the front door if the resident cannot be accommodated by relocation to a different unit that meets the resident's needs.

- A PHA may be required to pay for and install grab bars in the resident's dwelling unit in order to accommodate a resident who has a mobility disability.
- A PHA may be permitted to transfer a resident with disabilities who needs an accessible unit to an appropriate available accessible unit or an appropriate accessible unit that can be modified in lieu of modifying the tenant's current inaccessible unit. .

Note: this requirement to accommodate individual tenant's requests for accessible features is separate from the PHA's affirmative obligation to have an inventory of accessible units available for persons with disabilities pursuant to 24 C.F.R. §§ 8.22, 8.23 and 8.25.

7. Distribution of Accessible Dwelling Units (24 CFR § 8.26). Required accessible dwelling units shall, to the maximum extent feasible and subject to reasonable health and safety requirements, be distributed throughout projects and sites and shall be available in a sufficient range of sizes and amenities so that persons with disabilities have choices of living arrangements comparable to that of other families eligible for assistance under the same program.

8. Occupancy of Accessible Dwelling Units (24 CFR § 8.27). PHAs shall adopt suitable means including providing information in its application packets, providing refresher information to each resident during annual re-certifications and posting notices in its Admissions & Occupancy Offices to ensure that information regarding the availability of accessible dwelling units reaches eligible persons with disabilities. The PHAs shall also modify its Admissions, Occupancy and Transfer policies and procedures in order to maximize the occupancy of its accessible units by eligible individuals whose disability requires the accessibility features of the particular unit.

PHAs shall also take reasonable non-discriminatory steps to maximize the utilization of accessible units by eligible individuals whose disability requires the accessibility features of the particular unit. To this end, when an accessible unit becomes vacant, the PHA shall:

- a. First, offer the unit to a current occupant with disabilities in the same development that requires the accessibility features of the vacant accessible unit and occupying a unit not having those accessibility features. The PHA must pay moving expenses to transfer a resident with a disability to an accessible unit as an accommodation for the resident's disability.
- b. Second, if there is no current resident in the same development who requires the accessibility features of the vacant, accessible unit, the PHA will offer the unit to a current resident with disabilities residing in another development that requires the accessibility features of the vacant, accessible unit and occupying a unit not having those accessibility features.
- c. Third, if there is no current resident who requires the accessibility features of the vacant, accessible unit, then the PHA will offer the vacant, accessible unit to an eligible, qualified applicant with disabilities on the PHA's waiting list who can benefit from the accessible features of the available, accessible unit.
- d. Fourth, if there is not an eligible qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible unit, then the PHA should offer the available accessible unit to an applicant on the waiting list who does not need the accessible features of the unit. However, the PHA may require the applicant to execute a lease that requires the resident to relocate, at the PHA's expense, to a non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. *See* 24 C.F.R. § 8.27. Although the regulation does not mandate the use of the lease provision requiring the nondisabled family to move, as a best practice, the Department strongly encourages recipients to incorporate it into the lease. By doing so, a recipient may not have to retrofit additional units because accessible units are occupied by persons who do not need the features of the units. In addition, making sure that accessible units are actually occupied by persons who need the features will make recipients better able to meet their obligation to ensure that that their program is usable and accessible to persons who need units with accessible features. 24 CFR 8.20.

Note: A PHA may not prohibit an eligible disabled family from accepting a non-accessible unit for which the family is eligible that may become available before an accessible unit. The PHA is required to modify such a non-accessible unit as needed, unless the modification would result in an undue financial and administrative burden.

9. PHA Requirements for the Housing Choice Voucher Program (24 CFR § 8.28).
[See Notice PIH 2005-05: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program]

In carrying out the requirements of 24 CFR § 8.28, the PHA or other recipient administering a Housing Choice Voucher Program shall:

- (1) In providing notice of the availability and nature of housing assistance for low-income families under program requirements, adopt a suitable means to ensure that the notice reaches eligible individuals with disabilities and that they can have an equal opportunity to participate in the application process for the Housing Choice Voucher Program;
 - I. In its activities to encourage participation by owners, include encouragement of participation by owners having accessible units;
 - II. When issuing a Housing Voucher to a family which includes an individual with disabilities, include a current listing of available accessible units known to the PHA and, if necessary, otherwise assist the family in locating an available accessible dwelling unit;
 - III. Take into account the special problems of locating an accessible unit when considering requests by eligible individuals with disabilities for extensions of Housing Choice Vouchers; and
 - IV. In order to ensure that participating owners do not discriminate in the recipient’s Federally assisted program, a recipient shall enter into a HUD-approved contract with participating owners, which contract shall include necessary assurances of non-discrimination.
10. Non-housing Facilities (24 C.F.R. § 8.21). Newly constructed non-housing facilities shall be designed to be readily accessible to and usable by people with disabilities. Alterations to existing facilities shall be accessible to the maximum extent feasible – defined as not imposing an undue financial and administrative burden on the operations of the recipient’s program or activity. For existing non-housing facilities, PHAs shall operate each program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. There are a number of methods included in the regulation at 24 CFR § 8.21(c)(2) which may be used to accomplish accessibility in existing non-housing programs and activities. For example:

A PHA operates a community center. The PHA wishes to provide a tutoring program and the only available space available after school is on an

inaccessible second floor. A child who uses a wheelchair and lives in the PHA development served by the community center wishes to participate in the tutoring program. The PHA may provide space on the first floor for the child to work with his tutor or make tutoring available at another location that is accessible and convenient to the child as an alternative to installing an elevator or chair lift to get the child to the second floor tutoring site.

Departures from UFAS are permitted as outlined on Section I. B, item 5 of this Notice.

11. Accessibility Standards (24 CFR § 8.32). The design, construction or alteration of buildings in conformance with the Uniform Federal Accessibility Standards (UFAS) is deemed to comply with accessibility requirements of 24 CFR §§ 8.3, 8.21, 8.22, 8.23 and 8.25 with respect to those buildings. This does not require building alterations to remove or alter a load-bearing or structural member.
12. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 C.F.R. § 8.24(a) and 28 C.F.R. § 35.150 (a).

Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, public transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and recreational centers, are accessible to individuals with disabilities. In the alternative, the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, a PHA may comply with the requirements of 24 C.F.R. § 8.24 through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. *See* 24 C.F.R. § 8.24 (b).

C. ARCHITECTURAL BARRIERS ACT (ABA) OF 1968/24 CFR 40 – MAJOR PROVISIONS

Accessibility Standards for Design, Construction and Alteration of Publicly Owned Residential Structures (24 CFR § 40.4) - The Architectural Barriers Act (ABA) provides that residential structures that are (1) constructed or altered by or on behalf of the United States; (2) leased in whole or in part by the United States after August 12, 1968, if constructed or altered in accordance with plans or specifications of the United States; or (3) financed in whole or in part by a grant or loan made by United States after August 12, 1968; shall be constructed to ensure that persons with physical disabilities have access to and use of these structures. Buildings constructed with Federal funds are subject to the ABA. *See* 24 C.F.R. § 40.2.

All residential structures designed, constructed or altered that covered by the ABA must comply with the accessibility requirements of the Uniform Federal Accessibility Standards (UFAS).

UFAS Notes:

- Under the Architectural Barriers Act, four standard setting agencies—the General Services Administration, HUD, the Department of Defense, and the United States Postal Service (USPS) are responsible for development of the standards for Federal facilities, currently the UFAS.
- Figure 47(a) in UFAS does not permit the water closet to encroach on the clear, unobstructed (see UFAS §3.5) floor space required to provide an unobstructed 60” turning circle. See UFAS § 4.34.2(2).
- UFAS includes a definition of structural impracticability that does not require changes if such changes would result in the removal or alteration of a load-bearing structural member and/or an increased cost of 50 percent or more of the value of the element of the building or facility. See UFAS § 3.5. This does not alleviate the recipient’s responsibility for making its programs and housing units accessible to persons with disabilities.
- The exception for bathrooms found at Section 4.22.3 of UFAS is not applicable to dwelling unit bathrooms.
- UFAS Section 4.34.2(15)(c) requires at least two bedrooms in dwelling units with two or more bedrooms to be accessible and located on an accessible route. PHAs need to be mindful that new construction or substantial rehabilitation of multistory dwelling units must be in compliance with this requirement. Further, the Department wishes to encourage designs that provide persons with disabilities access to all parts of their dwelling units, and therefore encourages PHAs to take advantages of the strategies outlined in the PIH guidebook, *Strategies for Providing Accessibility and Visitability for Hope VI and Mixed Finance Homeownership.*” This guidebook may be found at the following link: <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
- Because UFAS does not fully address accessibility of units for persons with impaired hearing, for the 2% units that are required to be accessible for persons with hearing impairments, it is recommended that PHAs follow either the 1998 or 2003 edition of ICC/ANSI A117.1 Standard for Accessible and Usable Buildings and Facilities. The 1998 edition includes criteria for such dwelling units in Chapter 10, Section 1004, Dwelling Units with Accessible Communication Features. The 2003 edition includes these criteria in Chapter 10, Section 1005. These Standards are available through the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041-3405.

Note: The U. S. Access Board issued new ADA and ABA Accessibility Guidelines in July 2004. See the note about this on Page 4, Item B.5.

D. AMERICANS WITH DISABILITIES ACT OF 1990/28 CFR 35 FOR TITLE II (*SEE* WWW.ADA.GOV) –

1. Applicability. Title II of the ADA prohibits discrimination on the basis of disability by public entities. Public entity means any state or local government; or any department, agency, special purpose district or other instrumentality of a State or States or local government, including a PHA. *See* 28 CFR §§ 35.102 and 35.104.
2. Maintenance of Accessible Features. A public entity shall maintain in operable working condition those features of facilities and equipment that are required to be readily accessible to and usable by persons with disabilities (28 CFR § 35.133).
3. Non-discrimination. A public entity shall operate each service, program or activity so that when viewed in its entirety, each service, program or activity is readily accessible to and usable by individuals with disabilities (28 CFR § 35.150).
4. Design and Construction. Each facility or part of a facility constructed by, on behalf of, or for the use of a public entity shall be designed and constructed in such a manner that the facility is readily accessible to and usable by individuals with disabilities, if the construction was commenced after January 26, 1992 (28 CFR § 35.151(a)).
5. Alterations. Each facility or part of a facility altered by, on behalf of, or for the use of a public entity in a manner that effects or could effect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such a manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities if the alteration was commenced after January 26, 1992. (28 CFR § 35.151(b)).
6. Accessibility standards. Design, construction, or alteration of facilities in conformance with the UFAS or with the ADA Accessibility Standards (ADA Standards) shall be deemed to comply with requirements of 28 CFR § 35.151 except that the elevator exemption contained at §§ 4.1.3(5) and 4.1.6(1)(j) of the ADA Standards shall not apply. (28 CFR § 35.151(c)). (Note: The title II regulations at 24 CFR Part 35 contain extensive requirements that apply to public entities, including PHAs, and should be reviewed in their entirety to ensure compliance with the ADA.).
7. Common Areas. Section 504 and Title II of the ADA require that a PHA operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. *See* 24 C.F.R. § 8.24(a) and 28 C.F.R. § 35.150 (a).

Therefore, the PHA must ensure that its common areas and public spaces serving its designated accessible units, including, but not limited to, community buildings, management offices, meeting rooms, corridors, hallways, elevators, entrances, parking, transportation stops, social service offices, mail delivery, laundry rooms/facilities, trash disposal, playgrounds, child care centers, training centers and

recreational centers, are accessible to individuals with disabilities. In the alternative, the PHA may offer the program, service or activity, currently located in an inaccessible location, in an equivalent, alternate accessible location.

Specifically, a PHA may comply with the requirements of 28 C.F.R. § 35.150(a) through such means as reassignment of services to accessible buildings, assignment of aides to beneficiaries, provision of housing or related services at alternate accessible sites, alteration of existing facilities and construction of new facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. In choosing among available methods, the PHA shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate. *See* 24 C.F.R. § 8.24 (b).

E. THE FAIR HOUSING ACT/24 CFR PART 100

[*See* <http://www.usdoj.gov/crt/housing/title8.htm>;
see also http://www.access.gpo.gov/nara/cfr/waisidx_00/24cfr100_00.html]

1. Illegal Inquiries (24 CFR § 100.202) – The Fair Housing Act makes it unlawful for a housing provider to:

- Ask if an applicant for a dwelling has a disability or if a person intending to reside in a dwelling or anyone associated with an applicant or resident has a disability, or
- Ask about the nature or severity of a disability of such persons.

Housing providers may make the following inquiries, provided these inquiries are made of all applicants, regardless of whether the applicant appears to have a disability or says he or she has a disability;

- An inquiry into an applicant's ability to meet the requirements of tenancy;
- An inquiry to determine if an applicant is involved in current, illegal use of drugs;
- An inquiry to determine if an applicant qualifies for a dwelling legally available only to persons with a disability or to persons with a particular type of disability. A PHA may inquire whether an applicant has a disability for determining if that person is eligible to live in mixed population (elderly/disabled) housing or housing designated for persons with disabilities;
- An inquiry to determine if an applicant qualifies for housing that is legally available on a priority basis to persons with disabilities or to persons with a particular disability. This means a PHA may ask applicants if they need units with accessible features, including units designed to be accessible for persons with hearing and/or visual impairments, or if they qualify for a housing choice voucher designated for persons with disabilities only.

Verification of eligibility for PHA programs and benefits for persons with disabilities: PHAs are required to verify that an applicant qualifies as a person with a disability before permitting them to move to housing designated for persons with disabilities, or granting the \$400 rent calculation deduction, disability expense allowance, or deduction for unreimbursed medical expenses. Applicants and residents cannot be compelled to reveal that they have a disability; however, if they do not, they may not receive any of the benefits that such status confers. The wisest course is to ask **all** applicants whether they wish to claim disability status or need any special unit features or methods of communication for persons with disabilities.

Note: The PHA should explain the consequences of the disclosure of one's disability as having possible benefits in rent calculation or an accessible unit, and required verification of disability prior to receipt of the particular benefit at issue. The verification issue is discussed in greater detail in Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003)

Verification of disability and need for requested reasonable accommodation(s): To verify that an applicant is a person with a disability, PHA staff can first check to see whether the applicant is under age 62 and receives either Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) income. Receipt of such disability income is sufficient verification that an individual qualifies as a person with a disability. However, individuals with disabilities who do not receive SSI or SSDI may still qualify as a person with a disability under the statutory definitions of disability. In these cases, the individual with a disability may need to provide supporting documentation. (**Note:** Refer to Chapter 4 of the *Public Housing Occupancy Guidebook* (June 2003) for further information.)

If a person requests a reasonable accommodation, then the PHA may need to verify that the person is a qualified individual with a disability and whether a requested accommodation is necessary to provide the individual with an equal opportunity to use or enjoy a dwelling unit, including the public and common areas. In doing so, PHAs should only ask for information that is actually necessary to verify that the person has a disability and that there is a reasonable nexus between the individual's disability and the requested accommodation(s). PHAs are not permitted to inquire about the nature or severity of the person's disability. Further, PHA staff may never inquire about an individual's specific diagnosis or details of treatment. If a PHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment and/or information regarding the nature or severity of the person's disability, the PHA should immediately dispose of this confidential information; this information should never be maintained in the individual's file. Under no circumstances should a PHA request an applicant's or resident's medical records, nor should PHAs require that applicants or residents submit to physical examinations or medical tests such as TB testing, or AIDS testing as a condition of occupancy. For further information about verification of disability related to requests for reasonable accommodation, see HUD and DOJ *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

<http://www.hud.gov/utilities/intercept.cfm?offices/fheo/library/huddojstatement.pdf> inquiries related to

Note: It is a violation of Section 504 and the Fair Housing Act for a PHA to inquire whether an applicant or tenant is capable of “living independently.” Courts have consistently held that this is not a legitimate inquiry to make of applicants or residents in HUD-assisted housing and PHAs should ensure that their screening materials do not include questions related to such an inquiry.

2. Reasonable Modification to Existing Premises (24 CFR § 100.203) – Applies to private owners participating in housing choice voucher programs or other tenant-based programs, as well as to PHA owners of existing public housing units (But see Note below).

Under the Fair Housing Act, it is unlawful for an owner to refuse to permit a person with a disability, at their own expense, to make reasonable modifications of existing premises occupied or about to be occupied by a person with a disability if such modification may be necessary to afford the person with a disability full enjoyment of the premises. Under certain circumstances the owner may require the tenant to pay into an escrow account funds necessary to restore the interior of the unit to its original condition if the modification would interfere with the owner or next resident’s full enjoyment of the premises (see regulation for further requirements and guidance.) An owner may require that a resident restore modifications to the interior of the unit.

Note: PHAs must follow the more stringent reasonable accommodation requirements of 24 CFR §§ 8.4, 8.20, 8.24 and 8.33, which require PHAs to pay the cost of structural changes to facilities unless the PHA can accommodate the individual with a disability by equally effective means, or unless such structural changes would result in an undue financial and administrative burden (in such cases, the PHA must provide other alternative reasonable accommodation(s).) See also, discussion of reasonable accommodation under Section 504 above.

3. Reasonable Accommodation (24 CFR § 100.204) - Applies to private owners participating in Housing Choice Voucher programs, PHAs and all housing providers that are recipients of Federal financial assistance. PHAs are also covered under Section 504. (See Section I.B. above.) The Fair Housing Act makes it unlawful for any person to refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford persons with disabilities equal opportunity to use and enjoy a dwelling unit, including public and common use areas (see regulation for further requirements and guidance). See HUD and DOJ *Joint Statement on Reasonable Accommodations under the Fair Housing Act* (May 17, 2004).

<http://www.hud.gov/utilities/intercept.cfm?offices/fheo/library/huddojstatement.pdf>.

4. Design & Construction Requirements (24 CFR § 100.205) - applies to housing regardless of whether it receives federal financial assistance. The Fair Housing Act requires that covered multifamily dwellings, available for first occupancy after March 13, 1991 shall be designed and constructed so that:

- a. At least one building entrance is on an accessible route unless impractical due to terrain [24 CFR § 100.205(a)],
- b. Public and common use areas are accessible [24 CFR § 100.205(c)(1)],
- c. All doors into and within all premises are wide enough for passage by persons using wheelchairs [24 CFR § 100.205(c)(2),
- d. All premises within covered multifamily dwelling units contain the following features of adaptable design:
 - (i) An accessible route into and through the dwelling unit [24 CFR § 100.205(c)(3)(i)]
 - (ii) Light switches, outlets, electrical outlets, thermostats and other environmental controls, etc. are in accessible locations [24 CFR § 100.205(c)(3)(ii)]
 - (iii) Reinforcements in bathroom walls for later installation of grab bars [24 CFR § 100.205(c)(3)(iii)]
 - (iv) Usable kitchens and bathrooms for people using wheelchairs [24 CFR § 100.205(c)(3)(iv)]

The Act defines “covered multifamily dwelling” as:

- a. dwellings in buildings with four or more units served by one or more elevators, and
- b. ground floor units in other buildings with four or more units except townhouses without internal elevators.

On March 6, 1991, the Department published Fair Housing Accessibility Guidelines to give the building industry a safe harbor for compliance with the accessibility requirements of the Act. *See* 56 Federal Register 9472-9515, March 6, 1991. [<http://www.hud.gov/offices/fheo/disabilities/fhefhag.cfm>.] These Guidelines were supplemented by the following notice, “Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines”, published in the Federal Register on June 28, 1994 (59 Federal Register 33362-33368, June 28, 1994). These Guidelines and the Supplemental Notice apply ONLY with respect to the accessibility requirements of the Fair Housing Act.

Following reviews of certain building code documents and two subsequent editions of the ANSI A117.1 standard, the Department currently recognizes eight documents as providing a safe harbor for meeting the accessibility requirements of the Fair Housing Act. NOTE: Once gain; these safe harbors only apply to the Fair Housing Act. They do not apply to the accessibility requirements mandated under Section 504 of the Rehabilitation Act for HUD-assisted housing. The eight safe harbors are:

1. HUD’s March 6, 1991 Fair Housing Accessibility Guidelines (the Guidelines) and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;

2. ANSI A117.1-1986 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s regulations and the Guidelines;
3. CABO/ANSI A117.1-1992 – Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s regulations, and the Guidelines;
4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD’s regulations, and the Guidelines;
5. HUD’s Fair Housing Act Design Manual;
6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;
7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes; and
8. 2003 International Building Code (IBC), with one condition.

Effective February 28, 2005 HUD determined that the IBC 2003 is a safe harbor, conditioned upon ICC publishing and distributing a statement to jurisdictions and past and future purchases of the 2003 IBC stating, “ICC interprets Section 1104.1, and specifically, the Exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7.”

Note: It should be noted that the ANSI A117.1 standard contains only technical criteria, whereas the Fair Housing Act, HUD’s regulations, and the Guidelines contain both scoping and technical criteria. Therefore, in using any of the ANSI standards, it is necessary to also consult the Fair Housing Act, HUD’s regulations, and the Guidelines for the scoping requirements. The CRHA and the IBC contain both scoping and technical criteria and are written in building code language.

Note: In many cases, properties constructed with Federal financial assistance must meet both the Section 504 new construction requirements applicable to PHAs at 24 CFR § 8.22 and the Fair Housing Act design and construction requirements. For example:

- An elevator building constructed with Federal financial assistance would be required to have 100% of the dwelling units meet the Fair Housing Act design and construction requirements (24 CFR 100.205), and of this 100%, 5% would also need to comply with the stricter accessibility requirements of Section 504 and 24 CFR 8.22. .

Note: Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. 24 C.F.R. § 8.22 (b).

- Section 504 would require that a newly-constructed 100-unit two-story walk-up apartment building with no elevator that is constructed with Federal financial assistance is required to have a total of five accessible units for persons with mobility disabilities (5% of 100 units = 5 accessible units). If half of the 100 units were on the ground floor and half on the second floor, all 5 units would be required to be on the ground floor and built to comply with the Section 504 accessibility requirements at 24 CFR §§ 8.22 and 8.32. In addition, since all of the ground floor units are subject to the Fair Housing Act's design and construction requirements, all of the units on the ground floor would need to meet these requirements. For the most part, the 5% units designed to comply with Section 504 will meet the Fair Housing Act requirements, however, as noted above, there are a few Fair Housing Act requirements that are not required under Section 504. .

Note: Section 504 requires that an additional 2 percent of the units must be accessible for persons with vision or hearing impairments. These units can be located on either floor of the two-story walk-up, non-elevator building. *See* 24 C.F.R. § 8.22 (b).

- A development consisting entirely of multi-story dwelling units is not a covered multifamily dwelling for purposes of the design and construction requirements at 24 CFR § 100.205 unless any of the multistory dwelling units have an internal elevator. If any of the multistory dwelling units has an internal elevator, that dwelling unit and any public and common use spaces would be required to be accessible.. However, Section 504 would require that the development provide 5% of the units accessible for persons with mobility disabilities and an additional 2% accessible for persons with hearing or vision impairments. This can be accomplished by making 5% of the multi-story units accessible or by making building 5% of the development as single-story accessible units. *See* 24 CFR § 8.22. (A single story townhouse development of 4 or more units would also have to comply with the Fair Housing Act design and construction requirements).
- ICC Interprets Section 1104.1 and, specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any "Type B" dwelling units because site impracticality is addressed under Section 1107.7.

F. UNIVERSAL DESIGN

Universal Design is a design concept that encourages the construction or rehabilitation of housing and elements of the living environment in a manner that makes them usable by all people, regardless of ability, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products and the building environment more usable to as many people as possible at little or no extra cost. Universal design should strive for social integration and avoidance of discrimination, stigma, and dependence. By designing housing that is accessible to all there will be an increase in the

availability of affordable housing for all, regardless of age or ability. See <http://www.design.ncsu.edu/cud>.

Note: Universal Design concepts do not typically reach all of the requirements of accessibility laws like Section 504 and the Fair Housing Act and that care must be taken to ensure that the requirements of all applicable laws are met in projects promoting universal design.

II. PROGRAM SPECIFIC COMPLIANCE/ACTIVITIES

A. HOUSING CHOICE VOUCHER PROGRAM

[See Notice PIH 2005-05: New Freedom Initiative, Executive Order 13217: “Community-Based Alternatives for Individuals with Disabilities,” and the Housing Choice Voucher Program]

1. PHAs may give preference in admission to applicants with disabilities based on local needs and priorities. However, the PHA may not give a preference for admission of persons with a specific disability. See 24 CFR § 982.207(b)(3).
2. A person with disabilities may choose a suitable unit from among units available for rent in the local rental market.
3. The HUD field office may approve an exception payment standard amount within the upper range (between 110-120% of the Fair Market Rent) if required as a reasonable accommodation for a family that includes a person with disabilities. Any exceptions to the payment standards would be granted as a reasonable accommodation after the family with a person with disabilities locates a unit if needed as a reasonable accommodation. See 24 CFR § 982.503(c)(2)(ii). Requests for exception rents above 120% that are needed as a reasonable accommodation to a person with a disability to allow the person to rent an appropriate unit must be submitted to HUD headquarters for regulatory waiver and approval.
4. A PHA may approve the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities. This provision does not apply to shared housing. See 24 CFR §§ 982.306(d), 982.615 (b)(3).
5. Owners of private rental units leased with voucher assistance must make reasonable accommodations in rules, policies, practices or services if necessary for a person with disabilities to use the housing and must allow the person with a disability to make reasonable modifications in accordance with 24 C.F.R. § 100.203. See also 24 CFR § 100.204 (a).

B. SECTION 8/HOMEOWNERSHIP OPTION 24 CFR § 982.625 – THRU § 982.643

1. A disabled family meets the first-time homeowner requirement even if the family owned a home within the last three years if use of the homeownership option is needed as a reasonable accommodation so that the housing choice voucher program is readily accessible to and usable by the family member with a disability. 24 CFR § 982.(b)(3).

2. The PHA must count welfare assistance for a disabled family in determining whether the family meets the minimum annual income used to determine if a family member qualifies for commencement of home ownership assistance. *See* 24 CFR § 982.627(c)(2)(ii).
3. The full-time employment eligibility requirement does not apply to a family with a disability. 24 CFR§ 982.627(d)(3).
4. The limit on the length of time a family may receive homeownership assistance does not apply to families with disabilities. 24 CFR§ 982.634(c).
5. Covered homeownership expenses may include principal and interest on mortgage debt incurred by the family to finance the cost of making the home accessible for a family member with a disability if the PHA determines the allowance of such costs is needed as a reasonable accommodation. 24 CFR § 982.635(c)(vii).
6. HUD published an interim rule on June 22, 2001, to implement the three-year pilot program authorized by section 302 of the American Homeownership and Equal Opportunity Act of 2000. Under the pilot program, PHAs may admit families with disabilities whose annual income is greater than 80 percent of the area median into the pilot program. (However, if the annual income of a family with a disability participating in the pilot program exceeds 80 percent of the area median income, the amount of assistance the family would normally receive under the subsidy formula for the basic homeownership option is reduced.) Under the pilot, the PHA may also permit the family to move to a new unit with continued homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a Federally declared major disaster or emergency.

C. PROJECT-BASED VOUCHER PROGRAM

1. PHAs, at their discretion, may choose to use up to 20 percent of their tenant-based assistance for project-based subsidies to encourage the development of projects for persons with disabilities.
2. Under the new law governing project-based assistance, only 25 percent of the units in a building may be subsidized. However, the law allows an exception for projects for families with disabilities, elderly families and for families who receive supportive services.

NOTE: 24 CFR § 982.207(b) states that PHAs may adopt a preference in their project-based voucher program for admission of families that include persons with disabilities, but may not adopt a preference for admission of persons with a specific disability. PIH may waive this regulation, if, and only if the proposed preference meets the requirements of 24 CFR § 8.4(b)(1)(iv) which states that a recipient of Federal funds may not, solely on the basis of disability, provide different or separate housing, aid, benefit, or services to individuals with disabilities or to any class of individuals with disabilities from that provided to others, unless *such action is*

necessary to provide qualified individuals with disabilities with housing, aid, benefits, or services that are as effective as those provided to others.

D. CAPITAL FUND PROGRAM

Planning. Regulations governing the Capital Fund at 24 CFR 968 require compliance with statutory and regulatory requirements prohibiting discrimination against persons with disabilities. PHAs must ensure that all work is in compliance with these requirements in conducting Capital Fund activities.

- a. Substantial Alterations. The requirements for new construction at 24 CFR § 8.22(a) and (b) are applicable for all units that are substantially altered. [See definition of *substantial alteration* at 24 CFR § 8.23(a)].
- b. Other Alterations. If alterations are not substantial, then PHAs are required to provide accessible units up to 5 percent of the units in the development or replace the elements being modernized with accessible elements in all units of the project. PHAs should provide an additional 2 percent of the units for persons with hearing or vision impairments. See 24 C.F.R. § 8.23 (b).
- c. Reasonable Accommodations. PHAs should include in their projections of modernization needs amounts to cover known and projected alterations to units and facilities to address reasonable accommodation requests on a case-by-case basis.
- d. Residents/Advocacy Consultation. PHAs are encouraged to ensure that, at least yearly, residents with disabilities and advocates for persons with disabilities have an opportunity to provide input on modernization plans and activities.

The housing needs of persons with disabilities, accessible units and compliance with Section 504, the ADA, and the FHA are required to be addressed in accordance with 24 CFR § 903.7. Also, see 24 CFR Part 903 for additional related requirements.

Note: Modernization activities covered by statutory civil rights requirements such as Section 504, the ABA, the FHA and the ADA take precedence over non-emergency modernization activities.

E. HOPE VI

1. HOPE VI Notice of Funding Availability (NOFA) Accessibility Requirements. The design of proposed new construction and/or rehabilitation of housing must conform to the civil rights statutes and regulations delineated in each Grantee's Grant Agreement.
2. Accessible For-Sale Units. The HOPE VI Program encourages PHAs to include 5 percent of for-sale units accessible for persons with mobility impairments and 2 percent for persons with hearing and vision impairments.

3. Visitability. The HOPE VI Program strongly encourages making as many “visitable” units as possible. Visibility standards recommended by HUD apply to units that are not otherwise covered by accessibility requirements. The elements of visitability are also described in the Glossary of HOPE VI terms, which is posted to the HOPE VI website. See <http://www.hud.gov/hopevi>.
4. Advocacy Consultation/Participation. The HOPE VI Program encourages PHAs to work with local advocacy groups that represent persons with disabilities, the elderly and other special needs populations in developing HOPE VI plans.
5. Relocation Units. HOPE VI funds can be used to modify units to be occupied by families in the housing choice voucher program to make them accessible for residents with disabilities. The Department has determined that the costs of accessibility modification in rental units which are necessary for persons with disabilities who receive tenant-based relocation assistance under the voucher program in connection with a HOPE VI project are eligible HOPE VI expenditures. The method of implementation is to be determined by each individual locality.
6. Homeownership Design Handbook. To order a copy of strategies for providing accessibility and visitability for HOPE VI and mixed finance homeownership, go to the publications and resources page of the HOPE VI website at <http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/index.cfm>.
7. Designated Housing Plans. All allocation plan applications for designated housing are now published on HUD’s web site at www.hud.gov/pih.
8. Single People with Disabilities. The HOPE VI program encourages 1 bedroom units for single people with disabilities.
9. Accessible Townhouse Design. In addition to the designs already available and in use, HOPE VI will continue to explore design alternatives for townhouse dwellings.

F. ADMISSION/OCCUPANCY

1. Application Process. PHAs must ensure that all employees who are involved in the application process understand how to conduct tenant selection and screening without discriminating on the basis of any protected class, in particular applicants with disabilities. All application offices must be accessible. The PHA must provide accessible materials for persons with sight and hearing impairments and otherwise provide effective communication, upon request. See 24 C.F.R. § 8.6.. A PHA must make special arrangements to take the application of persons who are unable to come to the PHA’s offices because of a disability. At the initial point of contact with each applicant, the PHA must inform all applicants of alternative forms of communication. See 24 C.F.R. § 8.6.
2. Effective Communication/Provision of Auxiliary Aids & Services:

The PHA shall provide appropriate auxiliary aids and services, where necessary, to afford an individual with disabilities an equal opportunity to participate in the PHA’s

programs, services and activities. In determining what auxiliary aids are appropriate, the PHA shall give primary consideration to the request(s) of the individual with disabilities unless doing so would result in a fundamental alteration of the PHA's programs or in undue financial and administrative burden. If an action would result in such an alteration or burdens, the PHA shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the PHA's program or activity.

The PHA is not required to provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature. *See* 24 C.F.R. § 8.6, 28 C.F.R. §§ 35.160 and 35.161.

When the PHA has initial contact with the applicant, resident, or member of the public, the PHA staff should ask whether the applicant, resident, or member of the public requires an alternate form of communication. Examples of alternative forms of communication might include, but are not limited to: the provision of a qualified sign language interpreter; having written materials explained orally by staff either in person or by telephone; provision of written materials in large/bold font; information on audiocassette; permitting applicants to file applications by mail; and permitting alternative sites for the receipt of applications.

In addition, the PHA may never require the applicant to provide, or pay for, his/her own sign language interpreter. Rather, it is always the PHA's responsibility to provide, upon request, a qualified sign language interpreter. However, the PHA's responsibility to provide a qualified sign language interpreter does not preclude an individual's right to have a friend, relative or advocate accompany him/her for purposes of conducting business with the PHA.

3. Live-in-Aides. In some cases, individuals with disabilities may require a live-in-aide. A PHA should consider a person a live in aide if the person: (1) is determined to be essential to the care and well being of a family member with a disability; (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the supportive services. A live-in-aide should not be required to share a bedroom with another member of the household. *See* 24 CFR §§ 966.4(d)(3) and 982.316], 982. 402(b).
4. Verification. The PHA may verify a person's disability only to the extent necessary to ensure that applicants are qualified for the housing for which they are applying; that applicants are qualified for deductions used in determining adjusted income; that applicants are entitled to any preference they may claim; and that applicants who have requested a reasonable accommodation have a need for the requested accommodation. A PHA may not require applicants to provide access to confidential medical records in order to verify a disability nor may a PHA require specific details as to the disability. A PHA may require documentation of the manifestation of the disability that causes a need for a specific reasonable accommodation or accessible unit. A PHA may not seek the individual's specific diagnosis, nor may the PHA seek information regarding the nature, severity or effects of the individual's disability.

5. Vacant Accessible Units. In order to maximize the use of accessible features of the unit, if an appropriate size accessible unit is not available, a PHA may consider overhousing an applicant with a disability who needs an accessible unit. *See* 24 C.F.R. § 8.27. If there is not an eligible, qualified resident or applicant with disabilities on the waiting list who wishes to reside in the available, accessible or adaptable unit, then the PHA may offer the unit to an applicant on the waiting list or another resident who does not need the accessible features of the unit. *See* 24 C.F.R. § 8.27. However, the PHA may require the applicant or resident to execute a Lease/Lease Addendum that requires the resident to relocate at the PHA's expense to a vacant, non-accessible unit within thirty (30) days of notice by the PHA that there is an eligible applicant or existing resident with disabilities who requires the accessibility features of the unit. See discussion in Section I.B(8).

In addition, the PHA should maintain an adequate pool of eligible applicants with disabilities who require accessible or adaptable units so that when such a unit becomes available, there is an eligible applicant with disabilities ready and willing to rent the unit. *See* 24 C.F.R. § 8.27. The PHA should also conduct outreach activities for income-eligible persons with disabilities. The outreach activities may include, but is not limited to publicity/advertising in local print media, contacts with advocacy groups representing persons with disabilities and other entities that come into contact with persons with disabilities such as social service agencies, medical providers, etc.

Reminder – As noted previously in Paragraph B. 7 – “Occupancy of Accessible Dwelling Units” – Section 504 requires that accessible units must be offered first to a current PHA resident in need of the accessible features of the available accessible unit and second, to a qualified applicant with a disability on the PHA's waiting list who requires the accessibility features of the vacant, accessible unit. *See* 24 C.F.R. § 8.27.

6. Screening/Reasonable Accommodations. Many applicants with disabilities will pass screening, will not need a reasonable accommodation, will not need special accessibility features, and will be admitted in exactly the same manner as applicants without disabilities. Applicants who fail screening will receive a rejection letter. This letter must provide all applicants with information concerning the PHA's informal review process and their right to request a hearing. The letter must also state that applicants with disabilities have the right to request reasonable accommodations to participate in the informal hearing process. The PHA is obligated to provide such reasonable accommodation unless doing so would result in a fundamental alteration in the nature of the PHA's program.

If requested by the applicant, a PHA must consider verifiable mitigating circumstances that explain and/or overcome any prior misconduct related to a previous tenancy. If a reasonable accommodation would allow an applicant with a disability to meet the eligibility requirements for housing, a housing provider must provide the requested accommodation.

A reasonable accommodation allows the applicant with a disability to meet essential requirements of tenancy; it does not require the PHA to reduce or waive essential eligibility or residency requirements. Examples of reasonable accommodations

include, but are not limited to: physical alteration of units; making services and programs currently located in an inaccessible location in an alternate, accessible location; and revising the PHA's policies and procedures. The PHA should focus on finding a reasonable accommodation that will permit the applicant with a disability to comply with the essential obligations of tenancy. A PHA is not required to excuse the applicant from meeting those requirements. The PHA should provide all applicants with information regarding the PHA's Reasonable Accommodation Policy and Procedures at the time they apply for admission and at every annual re-certification. Each PHA must have a reasonable accommodation policy. The PHA's responsibility to provide reasonable accommodations for applicants and residents is present at all times, including during lease enforcement. See discussion in Section I.B.(6).

7. Unit Size. In public housing, a family with a disability may need a unit that is larger than the PHA's permitted occupancy standards. It is unlawful to fail to provide a reasonable accommodation which denies such a family the opportunity to apply for and obtain a larger unit if the disability of the family member requires this type of accommodation.
8. Unit Location. In public housing, a family applying for a unit or requesting a transfer may need a first floor unit due to a disability.

Note: Persons with disabilities cannot be required to occupy first floor units in elevator buildings, or in non-elevator buildings if the person is able to and wishes to use stairs.

9. Pets: Regular PHA pet policies do not apply to animals that are used to assist persons with disabilities and are necessary as a reasonable accommodation. [An "Assistance Animal" is an animal that is needed as a reasonable accommodation for persons with disabilities. An assistance animal is not considered a "pet" and thus, is not subject to the PHA's pet policy. Assistance animals are animals that work, provide assistance, perform tasks for the benefit of a person with a disability or provide emotional support that alleviates one or more identified symptoms or effects of a person's disability.]

A PHA may not refuse to allow a person with a disability to have an assistance animal merely because the animal does not have formal training. Some, but not all animals that assist persons with disabilities are professionally trained. Other assistance animals are trained by the owners and, in some cases, no special training is required. The question is whether or not the animal performs the assistance or provides the benefit needed by the person with a disability.

Assistance animals are exempt from a PHA's "pet" restrictions or a PHA's policy requiring pet deposits or monthly pet fees. However, all reasonable lease provisions relating to health and safety apply to assistance/service animals such as maintaining the premises in a clean and sanitary condition and ensuring that neighbors enjoy their premises in a safe and peaceful manner.

I. VISITABILITY

1. Visitability Concept. Although not a requirement, it is recommended that all

design, construction and alterations incorporate, whenever practical and economical, the concept of visitability in addition to the requirements under Section 504, the Architectural Barriers Act, Title II of the Americans with Disabilities Act and the Fair Housing Act.

Visitability is a design concept, for very little or no additional cost, that enhances the ability of persons with disabilities to interact with their neighbors, friends and associates in the community. See www.huduser.org/publications/pubasst/strategies.html

2. Design Considerations. Visitability design incorporates the following in all new construction or alterations, in addition to other requirements, whenever practical and possible for as many units as possible within a development:
 - a. Provide a 32” clear opening in all bathroom and interior doorways.
 - b. Provide at least one accessible means of egress/ingress for each unit.
3. Benefits of Visitability. Visitability also expands the availability of housing options for individuals who may not require full accessibility. It will assist PHAs in making reasonable accommodations and reduce, in some cases, the need for transfers when individuals become disabled in place. Visitability will also improve the marketability of units.

J. ACCESSIBILITY FUNDING SOURCES

PHA Capital Fund, PHA operating budgets, PHA operating reserves, PHA Housing Choice Voucher administrative fees and administrative fee reserves, State or local Community Development Block Grant funds, State and local HOME Program funds, Corporate donations, non-profit contributions from organizations such as Rotary Clubs, Lions Clubs, sororities/fraternities, etc., subject to applicable program requirements.

For further information about this Notice, contact the nearest HUD Office of Public Housing within your State. Locations of these offices are available on HUD’s website at <http://www.hud.gov/>.

/s/
Orlando J. Cabrera, Assistant Secretary for
Public and Indian Housing



**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION**



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**

*Washington, D.C.
March 5, 2008*

**JOINT STATEMENT OF
THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND THE DEPARTMENT OF JUSTICE**

***REASONABLE MODIFICATIONS UNDER THE
FAIR HOUSING ACT***

Introduction

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the federal Fair Housing Act¹ (the “Act”), which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One type of disability discrimination prohibited by the Act is a refusal to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises.³ HUD and DOJ frequently respond to complaints alleging that housing providers have violated the Act by refusing reasonable modifications to persons with disabilities. This Statement provides technical assistance regarding the rights and obligations of persons with disabilities and housing providers under the Act relating to reasonable modifications.⁴

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that the definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

³ 42 U.S.C. § 3604(f)(3)(A).

⁴ This Statement does not address the principles relating to reasonable accommodations. For further information see the Joint Statement of the Department of Housing and Urban

This Statement is not intended to provide specific guidance regarding the Act's design and construction requirements for multifamily dwellings built for first occupancy after March 13, 1991. Some of the reasonable modifications discussed in this Statement are features of accessible design that are required for covered multifamily dwellings pursuant to the Act's design and construction requirements. As a result, people involved in the design and construction of multifamily dwellings are advised to consult the Act at 42 U.S.C. § 3604(f)(3)(c), the implementing regulations at 24 C.F.R. § 100.205, the Fair Housing Accessibility Guidelines, and the Fair Housing Act Design Manual. All of these are available on HUD's website at www.hud.gov/offices/fheo/disabilities/index.cfm. Additional technical guidance on the design and construction requirements can also be found on HUD's website and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Questions and Answers

1. What types of discrimination against persons with disabilities does the Act prohibit?

The Act prohibits housing providers from discriminating against housing applicants or residents because of their disability or the disability of anyone associated with them and from treating persons with disabilities less favorably than others because of their disability. The Act makes it unlawful for any person to refuse “to permit, at the expense of the [disabled] person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.”⁵ The Act also makes it unlawful for any person to refuse “to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford ... person(s) [with disabilities] equal opportunity to use and enjoy a dwelling.” The Act also prohibits housing providers from refusing residency to persons with disabilities, or, with some narrow exceptions⁶,

Development and the Department of Justice: Reasonable Accommodations Under the Fair Housing Act, dated May 17, 2004. This Joint Statement is available at www.hud.gov/offices/fheo/disabilities/index.cfm and http://www.usdoj.gov/crt/housing/jointstatement_ra.htm. See also 42 U.S.C. § 3604(f)(3)(B).

This Statement also does not discuss in depth the obligations of housing providers who are recipients of federal financial assistance to make and pay for structural changes to units and common and public areas that are needed as a reasonable accommodation for a person's disability. See Question 31.

⁵ 42 U.S.C. § 3604(f)(3)(A). HUD regulations pertaining to reasonable modifications may be found at 24 C.F.R. § 100.203.

⁶ The Act contemplates certain limits to the receipt of reasonable accommodations or reasonable modifications. For example, a tenant may be required to deposit money into an interest bearing

placing conditions on their residency, because those persons may require reasonable modifications or reasonable accommodations.

2. What is a reasonable modification under the Fair Housing Act?

A reasonable modification is a structural change made to existing premises, occupied or to be occupied by a person with a disability, in order to afford such person full enjoyment of the premises. Reasonable modifications can include structural changes to interiors and exteriors of dwellings and to common and public use areas. A request for a reasonable modification may be made at any time during the tenancy. The Act makes it unlawful for a housing provider or homeowners' association to refuse to allow a reasonable modification to the premises when such a modification may be necessary to afford persons with disabilities full enjoyment of the premises.

To show that a requested modification may be necessary, there must be an identifiable relationship, or nexus, between the requested modification and the individual's disability. Further, the modification must be "reasonable." Examples of modifications that typically are reasonable include widening doorways to make rooms more accessible for persons in wheelchairs; installing grab bars in bathrooms; lowering kitchen cabinets to a height suitable for persons in wheelchairs; adding a ramp to make a primary entrance accessible for persons in wheelchairs; or altering a walkway to provide access to a public or common use area. These examples of reasonable modifications are not exhaustive.

3. Who is responsible for the expense of making a reasonable modification?

The Fair Housing Act provides that while the housing provider must permit the modification, the tenant is responsible for paying the cost of the modification.

4. Who qualifies as a person with a disability under the Act?

The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other

account to ensure that funds are available to restore the interior of a dwelling to its previous state. See, e.g., Question 21 below. A reasonable accommodation can be conditioned on meeting reasonable safety requirements, such as requiring persons who use motorized wheelchairs to operate them in a manner that does not pose a risk to the safety of others or cause damage to other persons' property. See Joint Statement on Reasonable Accommodations, Question 11.

than addiction caused by current, illegal use of a controlled substance) and alcoholism.

The term “substantially limits” suggests that the limitation is “significant” or “to a large degree.”

The term “major life activity” means those activities that are of central importance to daily life, such as seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, and speaking. This list of major life activities is not exhaustive.

5. Who is entitled to a reasonable modification under the Fair Housing Act?

Persons who meet the Fair Housing Act’s definition of “person with a disability” may be entitled to a reasonable modification under the Act. However, there must be an identifiable relationship, or nexus, between the requested modification and the individual’s disability. If no such nexus exists, then the housing provider may refuse to allow the requested modification.

Example 1: A tenant, whose arthritis impairs the use of her hands and causes her substantial difficulty in using the doorknobs in her apartment, wishes to replace the doorknobs with levers. Since there is a relationship between the tenant’s disability and the requested modification and the modification is reasonable, the housing provider must allow her to make the modification at the tenant’s expense.

Example 2: A homeowner with a mobility disability asks the condo association to permit him to change his roofing from shaker shingles to clay tiles and fiberglass shingles because he alleges that the shingles are less fireproof and put him at greater risk during a fire. There is no evidence that the shingles permitted by the homeowner’s association provide inadequate fire protection and the person with the disability has not identified a nexus between his disability and the need for clay tiles and fiberglass shingles. The homeowner’s association is not required to permit the homeowner’s modification because the homeowner’s request is not reasonable and there is no nexus between the request and the disability.

6. If a disability is not obvious, what kinds of information may a housing provider request from the person with a disability in support of a requested reasonable modification?

A housing provider may not ordinarily inquire as to the nature and severity of an individual’s disability. However, in response to a request for a reasonable modification, a housing provider may request reliable disability-related information that (1) is necessary to verify that the person meets the Act’s definition of disability (i.e., has a physical or mental impairment that substantially limits one or more major life activities), (2) describes the needed modification, and (3) shows the relationship between the person’s disability and the need for the requested modification. Depending on the individual’s circumstances, information verifying that the person meets the Act’s definition of disability can usually be provided by the individual herself (e.g., proof that an individual under 65 years of age receives Supplemental Security

Income or Social Security Disability Insurance benefits⁸ or a credible statement by the individual). A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

Once a housing provider has established that a person meets the Act's definition of disability, the provider's request for documentation should seek only the information that is necessary to evaluate if the reasonable modification is needed because of a disability. Such information must be kept confidential and must not be shared with other persons unless they need the information to make or assess a decision to grant or deny a reasonable modification request or unless disclosure is required by law (e.g., a court-issued subpoena requiring disclosure).

7. What kinds of information, if any, may a housing provider request from a person with an obvious or known disability who is requesting a reasonable modification?

A housing provider is entitled to obtain information that is necessary to evaluate whether a requested reasonable modification may be necessary because of a disability. If a person's disability is obvious, or otherwise known to the housing provider, and if the need for the requested modification is also readily apparent or known, then the provider may not request any additional information about the requester's disability or the disability-related need for the modification.

If the requester's disability is known or readily apparent to the provider, but the need for the modification is not readily apparent or known, the provider may request only information that is necessary to evaluate the disability-related need for the modification.

Example 1: An applicant with an obvious mobility impairment who uses a motorized scooter to move around asks the housing provider to permit her to install a ramp at the entrance of the apartment building. Since the physical disability (i.e., difficulty walking) and the disability-related need for the requested modification are both readily apparent, the provider may not require the applicant to provide any additional information about her disability or the need for the requested modification.

⁸ Persons who meet the definition of disability for purposes of receiving Supplemental Security Income ("SSI") or Social Security Disability Income ("SSDI") benefits in most cases meet the definition of a disability under the Fair Housing Act, although the converse may not be true. See, e.g., Cleveland v. Policy Management Systems Corp., 526 U.S. 795, 797 (1999) (noting that SSDI provides benefits to a person with a disability so severe that she is unable to do her previous work and cannot engage in any other kind of substantial gainful work whereas a person pursuing an action for disability discrimination under the Americans with Disabilities Act may state a claim that "with a reasonable accommodation" she could perform the essential functions of the job).

Example 2: A deaf tenant asks his housing provider to allow him to install extra electrical lines and a cable line so the tenant can use computer equipment that helps him communicate with others. If the tenant's disability is known, the housing provider may not require him to document his disability; however, since the need for the electrical and cable lines may not be apparent, the housing provider may request information that is necessary to support the disability-related need for the requested modification.

8. Who must comply with the Fair Housing Act's reasonable modification requirements?

Any person or entity engaging in prohibited conduct – i.e., refusing to allow an individual to make reasonable modifications when such modifications may be necessary to afford a person with a disability full enjoyment of the premises – may be held liable unless they fall within an exception to the Act's coverage. Courts have applied the Act to individuals, corporations, associations and others involved in the provision of housing and residential lending, including property owners, housing managers, homeowners and condominium associations, lenders, real estate agents, and brokerage services. Courts have also applied the Act to state and local governments, most often in the context of exclusionary zoning or other land-use decisions. See, e.g., City of Edmonds v. Oxford House, Inc., 514 U.S. 725, 729 (1995); Project Life v. Glendening, 139 F. Supp. 2d 703, 710 (D. Md. 2001), aff'd, 2002 WL 2012545 (4th Cir. 2002).

9. What is the difference between a *reasonable accommodation* and a *reasonable modification* under the Fair Housing Act?⁹

Under the Fair Housing Act, a reasonable *modification* is a structural change made to the premises whereas a reasonable *accommodation* is a change, exception, or adjustment to a rule, policy, practice, or service. A person with a disability may need either a reasonable accommodation or a reasonable modification, or both, in order to have an equal opportunity to use and enjoy a dwelling, including public and common use spaces. Generally, under the Fair Housing Act, the housing provider is responsible for the costs associated with a reasonable accommodation unless it is an undue financial and administrative burden, while the tenant or someone acting on the tenant's behalf, is responsible for costs associated with a reasonable modification. See Reasonable Accommodation Statement, Questions 7 and 8.

Example 1: Because of a mobility disability, a tenant wants to install grab bars in the bathroom. This is a reasonable modification and must be permitted at the tenant's expense.

⁹ Housing providers that receive federal financial assistance are also subject to the requirements of Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794. Section 504, and its implementing regulations at 24 C.F.R. Part 8, prohibit discrimination based on disability, and obligate housing providers to make and pay for structural changes to facilities, if needed as a reasonable accommodation for applicants and tenants with disabilities, unless doing so poses an undue financial and administrative burden. See Question 31.

Example 2: Because of a hearing disability, a tenant wishes to install a peephole in her door so she can see who is at the door before she opens it. This is a reasonable modification and must be permitted at the tenant's expense.

Example 3: Because of a mobility disability, a tenant wants to install a ramp outside the building in a common area. This is a reasonable modification and must be permitted at the tenant's expense. See also Questions 19, 20 and 21.

Example 4: Because of a vision disability, a tenant requests permission to have a guide dog reside with her in her apartment. The housing provider has a "no-pets" policy. This is a request for a reasonable accommodation, and the housing provider must grant the accommodation.

10. Are reasonable modifications restricted to the interior of a dwelling?

No. Reasonable modifications are not limited to the interior of a dwelling. Reasonable modifications may also be made to public and common use areas such as widening entrances to fitness centers or laundry rooms, or for changes to exteriors of dwelling units such as installing a ramp at the entrance to a dwelling.

11. Is a request for a parking space because of a physical disability a *reasonable accommodation* or a *reasonable modification*?

Courts have treated requests for parking spaces as requests for a reasonable accommodation and have placed the responsibility for providing the parking space on the housing provider, even if provision of an accessible or assigned parking space results in some cost to the provider. For example, courts have required a housing provider to provide an assigned space even though the housing provider had a policy of not assigning parking spaces or had a waiting list for available parking. However, housing providers may not require persons with disabilities to pay extra fees as a condition of receiving accessible parking spaces.

Providing a parking accommodation could include creating signage, repainting markings, redistributing spaces, or creating curb cuts. This list is not exhaustive.

12. What if the structural changes being requested by the tenant or applicant are in a building that is subject to the design and construction requirements of the Fair Housing Act and the requested structural changes are a feature of accessible design that should have already existed in the unit or common area, e.g., doorways wide enough to accommodate a wheelchair, or an accessible entryway to a unit.

The Fair Housing Act provides that covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed to meet certain minimum accessibility and adaptability standards. If any of the structural changes needed by the tenant are ones that should have been included in the unit or public and common use area when constructed then the housing provider may be responsible for providing and paying for those requested structural changes. However, if the requested structural changes are not a feature of accessible design that should have already existed in the building pursuant to the design and construction requirements under the Act, then the tenant is responsible for paying for the cost of the structural changes as a reasonable modification.

Although the design and construction provisions only apply to certain multifamily dwellings built for first occupancy since 1991, a tenant may request reasonable modifications to housing built prior to that date. In such cases, the housing provider must allow the modifications, and the tenant is responsible for paying for the costs under the Fair Housing Act.

For a discussion of the design and construction requirements of the Act, and their applicability, see HUD's website at: www.hud.gov/offices/fheo/disabilities/index.cfm and the Fair Housing Accessibility FIRST website at: <http://www.fairhousingfirst.org>.

Example 1: A tenant with a disability who uses a wheelchair resides in a ground floor apartment in a non-elevator building that was built in 1995. Buildings built for first occupancy after March 13, 1991 are covered by the design and construction requirements of the Fair Housing Act. Because the building is a non-elevator building, all ground floor units must meet the minimum accessibility requirements of the Act. The doors in the apartment are not wide enough for passage using a wheelchair in violation of the design and construction requirements but can be made so through retrofitting. Under these circumstances, one federal court has held that the tenant may have a potential claim against the housing provider.

Example 2: A tenant with a disability resides in an apartment in a building that was built in 1987. The doors in the unit are not wide enough for passage using a wheelchair but can be made so through retrofitting. If the tenant meets the other requirements for obtaining a modification, the tenant may widen the doorways, at her own expense.

Example 3: A tenant with a disability resides in an apartment in a building that was built in 1993 in compliance with the design and construction requirements of the Fair Housing Act. The tenant wants to install grab bars in the bathroom because of her disability. Provided that the tenant meets the other requirements for obtaining a modification, the tenant may install the grab bars at her own expense.

13. Who is responsible for expenses associated with a reasonable modification, e.g., for upkeep or maintenance?

The tenant is responsible for upkeep and maintenance of a modification that is used exclusively by her. If a modification is made to a common area that is normally maintained by the housing provider, then the housing provider is responsible for the upkeep and maintenance of the modification. If a modification is made to a common area that is not normally maintained by

the housing provider, then the housing provider has no responsibility under the Fair Housing Act to maintain the modification.

Example 1: Because of a mobility disability, a tenant, at her own expense, installs a lift inside her unit to allow her access to a second story. She is required to maintain the lift at her expense because it is not in a common area.

Example 2: Because of a mobility disability, a tenant installs a ramp in the lobby of a multifamily building at her own expense. The ramp is used by other tenants and the public as well as the tenant with the disability. The housing provider is responsible for maintaining the ramp.

Example 3: A tenant leases a detached, single-family home. Because of a mobility disability, the tenant installs a ramp at the outside entrance to the home. The housing provider provides no snow removal services, and the lease agreement specifically states that snow removal is the responsibility of the individual tenant. Under these circumstances, the housing provider has no responsibility under the Fair Housing Act to remove snow on the tenant's ramp. However, if the housing provider normally provides snow removal for the outside of the building and the common areas, the housing provider is responsible for removing the snow from the ramp as well.

14. In addition to current residents, are prospective tenants and buyers of housing protected by the reasonable modification provisions of the Fair Housing Act?

Yes. A person may make a request for a reasonable modification at any time. An individual may request a reasonable modification of the dwelling at the time that the potential tenancy or purchase is discussed. Under the Act, a housing provider cannot deny or restrict access to housing because a request for a reasonable modification is made. Such conduct would constitute discrimination. The modification does not have to be made, however, unless it is reasonable. See Questions 2, 16, 21 and 23.

15. When and how should an individual request permission to make a modification?

Under the Act, a resident or an applicant for housing makes a reasonable modification request whenever she makes clear to the housing provider that she is requesting permission to make a structural change to the premises because of her disability. She should explain that she has a disability, if not readily apparent or not known to the housing provider, the type of modification she is requesting, and the relationship between the requested modification and her disability.

An applicant or resident is not entitled to receive a reasonable modification unless she requests one. However, the Fair Housing Act does not require that a request be made in a particular manner or at a particular time. A person with a disability need not personally make the reasonable modification request; the request can be made by a family member or someone else who is acting on her behalf. An individual making a reasonable modification request does

not need to mention the Act or use the words “reasonable modification.” However, the requester must make the request in a manner that a reasonable person would understand to be a request for permission to make a structural change because of a disability.

Although a reasonable modification request can be made orally or in writing, it is usually helpful for both the resident and the housing provider if the request is made in writing. This will help prevent misunderstandings regarding what is being requested, or whether the request was made. To facilitate the processing and consideration of the request, residents or prospective residents may wish to check with a housing provider in advance to determine if the provider has a preference regarding the manner in which the request is made. However, housing providers must give appropriate consideration to reasonable modification requests even if the requester makes the request orally or does not use the provider's preferred forms or procedures for making such requests.

16. Does a person with a disability have to have the housing provider’s approval before making a reasonable modification to the dwelling?

Yes. A person with a disability must have the housing provider’s approval before making the modification. However, if the person with a disability meets the requirements under the Act for a reasonable modification and provides the relevant documents and assurances, the housing provider cannot deny the request.

17. What if the housing provider fails to act promptly on a reasonable modification request?

A provider has an obligation to provide prompt responses to a reasonable modification request. An undue delay in responding to a reasonable modification request may be deemed a failure to permit a reasonable modification.

18. What if the housing provider proposes that the tenant move to a different unit in lieu of making a proposed modification?

The housing provider cannot insist that a tenant move to a different unit in lieu of allowing the tenant to make a modification that complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. Housing providers should be aware that persons with disabilities typically have the most accurate knowledge regarding the functional limitations posed by their disability.

Example: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes that in lieu of installing the ramp, the tenant move to a different unit in the building. The tenant is not obligated to accept the alternative proposed by the housing provider, as his request to modify his unit is reasonable and must be approved.

19. What if the housing provider wants an alternative modification or alternative design for the proposed modification that does not cost more but that the housing provider considers more aesthetically pleasing?

In general, the housing provider cannot insist on an alternative modification or an alternative design if the tenant complies with the requirements for reasonable modifications. See Questions 2, 21 and 23. If the modification is to the interior of the unit and must be restored to its original condition when the tenant moves out, then the housing provider cannot require that its design be used instead of the tenant's design. However, if the modification is to a common area or an aspect of the interior of the unit that would not have to be restored because it would not be reasonable to do so, and if the housing provider's proposed design imposes no additional costs and still meets the tenant's needs, then the modification should be done in accordance with the housing provider's design. See Question 24 for a discussion of the restoration requirements.

Example 1: As a result of a mobility disability, a tenant requests that he be permitted, at his expense, to install a ramp so that he can access his apartment using his motorized wheelchair. The existing entrance to his dwelling is not wheelchair accessible because the route to the front door requires going up a step. The housing provider proposes an alternative design for a ramp but the alternative design costs more and does not meet the tenant's needs. The tenant is not obligated to accept the alternative modification, as his request to modify his unit is reasonable and must be approved.

Example 2: As a result of a mobility disability, a tenant requests permission to widen a doorway to allow passage with her wheelchair. All of the doorways in the unit are trimmed with a decorative trim molding that does not cost any more than the standard trim molding. Because in usual circumstances it would not be reasonable to require that the doorway be restored at the end of the tenancy, the tenant should use the decorative trim when he widens the doorway.

20. What if the housing provider wants a more costly design for the requested modification?

If the housing provider wishes a modification to be made with more costly materials, in order to satisfy the landlord's aesthetic standards, the tenant must agree only if the housing provider pays those additional costs. Further, as discussed in Questions 21 and 23 below, housing providers may require that the tenant obtain all necessary building permits and may require that the work be performed in a workmanlike manner. If the housing provider requires more costly materials be used to satisfy her workmanship preferences beyond the requirements of the applicable local codes, the tenant must agree only if the housing provider pays for those additional costs as well. In such a case, however, the housing provider's design must still meet the tenant's needs.

21. What types of documents and assurances may a housing provider require regarding the modification before granting the reasonable modification?

A housing provider may require that a request for a reasonable modification include a description of the proposed modification both before changes are made to the dwelling and before granting the modification. A description of the modification to be made may be provided to a housing provider either orally or in writing depending on the extent and nature of the proposed modification. A housing provider may also require that the tenant obtain any building permits needed to make the modifications, and that the work be performed in a workmanlike manner.

The regulations implementing the Fair Housing Act state that housing providers generally cannot impose conditions on a proposed reasonable modification. For example, a housing provider cannot require that the tenant obtain additional insurance or increase the security deposit as a condition that must be met before the modification will be allowed. However, the Preamble to the Final Regulations also indicates that there are some conditions that can be placed on a tenant requesting a reasonable modification. For example, in certain limited and narrow circumstances, a housing provider may require that the tenant deposit money into an interest bearing account to ensure that funds are available to restore the interior of a dwelling to its previous state, ordinary wear and tear excepted. Imposing conditions not contemplated by the Fair Housing Act and its implementing regulations may be the same as an illegal refusal to permit the modification.

22. May a housing provider or homeowner's association condition approval of the requested modification on the requester obtaining special liability insurance?

No. Imposition of such a requirement would constitute a violation of the Fair Housing Act.

Example: Because of a mobility disability, a tenant wants to install a ramp outside his unit. The housing provider informs the tenant that the ramp may be installed, but only after the tenant obtains separate liability insurance for the ramp out of concern for the housing provider's potential liability. The housing provider may not impose a requirement of liability insurance as a condition of approval of the ramp.

23. Once the housing provider has agreed to a reasonable modification, may she insist that a particular contractor be used to perform the work?

No. The housing provider cannot insist that a particular contractor do the work. The housing provider may only require that whoever does the work is reasonably able to complete the work in a workmanlike manner and obtain all necessary building permits.

24. If a person with a disability has made reasonable modifications to the interior of the dwelling, must she restore *all* of them when she moves out?

The tenant is obligated to restore those portions of the interior of the dwelling to their previous condition only where "it is reasonable to do so" and where the housing provider has requested the restoration. The tenant is not responsible for expenses associated with reasonable

wear and tear. In general, if the modifications do not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant cannot be required to restore the modifications to their prior state. A housing provider may choose to keep the modifications in place at the end of the tenancy. See also Question 28.

Example 1: Because the tenant uses a wheelchair, she obtained permission from her housing provider to remove the base cabinets and lower the kitchen sink to provide for greater accessibility. It is reasonable for the housing provider to ask the tenant to replace the cabinets and raise the sink back to its original height.

Example 2: Because of a mobility disability, a tenant obtained approval from the housing provider to install grab bars in the bathroom. As part of the installation, the contractor had to construct reinforcements on the underside of the wall. These reinforcements are not visible and do not detract from the use of the apartment. It is reasonable for the housing provider to require the tenant to remove the grab bars, but it is not reasonable for the housing provider to require the tenant to remove the reinforcements.

Example 3: Because of a mobility disability, a tenant obtained approval from the housing provider to widen doorways to allow him to maneuver in his wheelchair. In usual circumstances, it is not reasonable for the housing provider to require him to restore the doorways to their prior width.

25. Of the reasonable modifications made to the interior of a dwelling that must be restored, must the person with a disability pay to make those restorations when she moves out?

Yes. Reasonable restorations of the dwelling required as a result of modifications made to the interior of the dwelling must be paid for by the tenant unless the next occupant of the dwelling wants to retain the reasonable modifications and where it is reasonable to do so, the next occupant is willing to establish a new interest bearing escrow account. The subsequent tenant would have to restore the modifications to the prior condition at the end of his tenancy if it is reasonable to do so and if requested by the housing provider. See also Question 24.

26. If a person with a disability has made a reasonable modification to the exterior of the dwelling, or a common area, must she restore it to its original condition when she moves out?

No. The Fair Housing Act expressly provides that housing providers may only require restoration of modifications made to interiors of the dwelling at the end of the tenancy. Reasonable modifications such as ramps to the front door of the dwelling or modifications made to laundry rooms or building entrances are not required to be restored.

27. May a housing provider increase or require a person with a disability to pay a security deposit if she requests a reasonable modification?

No. The housing provider may not require an increased security deposit as the result of a request for a reasonable modification, nor may a housing provider require a tenant to pay a security deposit when one is not customarily required. However, a housing provider may be able to take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy. See Questions 21 and 28.

28. May a housing provider take other steps to ensure that money will be available to pay for restoration of the interior of the premises at the end of the tenancy?

Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, the housing provider may negotiate with the tenant as part of a restoration agreement a provision that requires the tenant to make payments into an interest-bearing escrow account. A housing provider may not routinely require that tenants place money in escrow accounts when a modification is sought. Both the amount and the terms of the escrow payment are subject to negotiation between the housing provider and the tenant.

Simply because an individual has a disability does not mean that she is less creditworthy than an individual without a disability. The decision to require that money be placed in an escrow account should be based on the following factors: 1) the extent and nature of the proposed modifications; 2) the expected duration of the lease; 3) the credit and tenancy history of the individual tenant; and 4) other information that may bear on the risk to the housing provider that the premises will not be restored.

If the housing provider decides to require payment into an escrow account, the amount of money to be placed in the account cannot exceed the cost of restoring the modifications, and the period of time during which the tenant makes payment into the escrow account must be reasonable. Although a housing provider may require that funds be placed in escrow, it does not automatically mean that the full amount of money needed to make the future restorations can be required to be paid at the time that the modifications are sought. In addition, it is important to note that interest from the account accrues to the benefit of the tenant. If an escrow account is established, and the housing provider later decides not to have the unit restored, then all funds in the account, including the interest, must be promptly returned to the tenant.

Example 1: Because of a mobility disability, a tenant requests a reasonable modification. The modification includes installation of grab bars in the bathroom. The tenant has an excellent credit history and has lived in the apartment for five years before becoming disabled. Under these circumstances, it may not be reasonable to require payment into an escrow account.

Example 2: Because of a mobility disability, a new tenant with a poor credit history wants to lower the kitchen cabinets to a more accessible height. It may be reasonable for the housing provider to require payment into an interest bearing escrow account to ensure that funds are available for restoration.

Example 3: A housing provider requires all tenants with disabilities to pay a set sum into an interest bearing escrow account before approving any request for a reasonable modification. The amount required by the housing provider has no relationship to the actual cost of the restoration. This type of requirement violates the Fair Housing Act.

29. What if a person with a disability moves into a rental unit and wants the carpet taken up because her wheelchair does not move easily across carpeting? Is that a reasonable accommodation or modification?

Depending on the circumstances, removal of carpeting may be either a reasonable accommodation or a reasonable modification.

Example 1: If the housing provider has a practice of not permitting a tenant to change flooring in a unit and there is a smooth, finished floor underneath the carpeting, generally, allowing the tenant to remove the carpet would be a reasonable accommodation.

Example 2: If there is no finished flooring underneath the carpeting, generally, removing the carpeting and installing a finished floor would be a reasonable modification that would have to be done at the tenant's expense. If the finished floor installed by the tenant does not affect the housing provider's or subsequent tenant's use or enjoyment of the premises, the tenant would not have to restore the carpeting at the conclusion of the tenancy. See Questions 24 and 25.

Example 3: If the housing provider has a practice of replacing the carpeting before a new tenant moves in, and there is an existing smooth, finished floor underneath, then it would be a reasonable accommodation of his normal practice of installing new carpeting for the housing provider to just take up the old carpeting and wait until the tenant with a mobility disability moves out to put new carpeting down.

30. Who is responsible for paying for the costs of structural changes to a dwelling unit that has not yet been constructed if a purchaser with a disability needs different or additional features to make the unit meet her disability-related needs?

If the dwelling unit is not subject to the design and construction requirements (i.e., a detached single family home or a multi-story townhouse without an elevator), then the purchaser is responsible for the additional costs associated with the structural changes. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

If the unit being purchased is subject to the design and construction requirements of the Fair Housing Act, then all costs associated with incorporating the features required by the Act are borne by the builder. If a purchaser with a disability needs different or additional features added to a unit under construction or about to be constructed beyond those already required by the Act, and it would cost the builder more to provide the requested features, the structural changes would be considered a reasonable modification and the additional costs would have to

be borne by the purchaser. The purchaser is responsible for any additional cost that the structural changes might create over and above what the original design would have cost.

Example 1: A buyer with a mobility disability is purchasing a single family dwelling under construction and asks for a bathroom sink with a floorless base cabinet with retractable doors that allows the buyer to position his wheelchair under the sink. If the cabinet costs more than the standard vanity cabinet provided by the builder, the buyer is responsible for the additional cost, not the full cost of the requested cabinet. If, however, the alternative cabinet requested by the buyer costs less than or the same as the one normally provided by the builder, and the installation costs are also the same or less, then the builder should install the requested cabinet without any additional cost to the buyer.

Example 2: A buyer with a mobility disability is purchasing a ground floor unit in a detached townhouse that is designed with a concrete step at the front door. The buyer requests that the builder grade the entrance to eliminate the need for the step. If the cost of providing the at-grade entrance is no greater than the cost of building the concrete step, then the builder would have to provide the at-grade entrance without additional charge to the purchaser.

Example 3: A buyer with a mobility disability is purchasing a unit that is subject to the design and construction requirements of the Fair Housing Act. The buyer wishes to have grab bars installed in the unit as a reasonable modification to the bathroom. The builder is responsible for installing and paying for the wall reinforcements for the grab bars because these reinforcements are required under the design and construction provisions of the Act. The buyer is responsible for the costs of installing and paying for the grab bars.

31. Are the rules the same if a person with a disability lives in housing that receives federal financial assistance and the needed structural changes to the unit or common area are the result of the tenant having a disability?

Housing that receives federal financial assistance is covered by both the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973. Under regulations implementing Section 504, structural changes needed by an applicant or resident with a disability in housing receiving federal financial assistance are considered reasonable accommodations. They must be paid for by the housing provider unless providing them would be an undue financial and administrative burden or a fundamental alteration of the program or unless the housing provider can accommodate the individual's needs through other means. Housing that receives federal financial assistance and that is provided by state or local entities may also be covered by Title II of the Americans with Disabilities Act.

Example 1: A tenant who uses a wheelchair and who lives in privately owned housing needs a roll-in shower in order to bathe independently. Under the Fair Housing Act the tenant would be responsible for the costs of installing the roll-in shower as a reasonable modification to his unit.

Example 2: A tenant who uses a wheelchair and who lives in housing that receives federal financial assistance needs a roll-in shower in order to bathe independently. Under Section 504 of the Rehabilitation Act of 1973, the housing provider would be obligated to pay for and install the roll-in shower as a reasonable accommodation to the tenant unless doing so was an undue financial and administrative burden or unless the housing provider could meet the tenant's disability-related needs by transferring the tenant to another appropriate unit that contains a roll-in shower.

HUD has provided more detailed information about Section 504's requirements. See www.hud.gov/offices/fheo/disabilities/sect504.cfm.

32. If a person believes that she has been unlawfully denied a reasonable modification, what should that person do if she wants to challenge that denial under the Act?

When a person with a disability believes that she has been subjected to a discriminatory housing practice, including a provider's wrongful denial of a request for a reasonable modification, she may file a complaint with HUD within one year after the alleged denial or may file a lawsuit in federal district court within two years of the alleged denial. If a complaint is filed, HUD will investigate the complaint at no cost to the person with a disability.

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the "on-line" complaint form available on the HUD internet site: <http://www.hud.gov>; or
- By mailing a completed complaint form or letter to:

Office of Fair Housing and Equal Opportunity
Department of Housing & Urban Development
451 Seventh Street, S.W., Room 5204
Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

The Civil Rights Division of the Justice Department brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a "pattern or practice" of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as *amicus curiae* in federal court cases that raise important legal questions involving the application

and/or interpretation of the Act. To alert the Justice Department to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for *amicus* participation, contact:

U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section – G St.
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

For more information on the types of housing discrimination cases handled by the Civil Rights Division, please refer to the Housing and Civil Enforcement Section's website at <http://www.usdoj.gov/crt/housing/hcehome.html>.

A HUD or Department of Justice decision not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.



ADA

**2010 Revised
Requirements**

The Department of Justice published revised final regulations implementing the Americans with Disabilities Act (ADA) for title II (State and local government services) and title III (public accommodations and commercial facilities) on September 15, 2010, in the Federal Register. These requirements, or rules, clarify and refine issues that have arisen over the past 20 years and contain new, and updated, requirements, including the 2010 Standards for Accessible Design (2010 Standards).

Service Animals

Overview

This publication provides guidance on the term “service animal” and the service animal provisions in the Department’s revised regulations.

- Beginning on March 15, 2011, only dogs are recognized as service animals under titles II and III of the ADA.
- A service animal is a dog that is individually trained to do work or perform tasks for a person with a disability.
- Generally, title II and title III entities must permit service animals to accompany people with disabilities in all areas where members of the public are allowed to go.

How “Service Animal” Is Defined

Service animals are defined as dogs that are individually trained to do work or perform tasks for people with disabilities. Examples of such work or tasks include guiding people who are blind, alerting people who are deaf, pulling a wheelchair, alerting and protecting a person who is having a seizure, reminding a person with mental illness to take prescribed medications, calming a person with Post Traumatic Stress Disorder (PTSD) during an anxiety attack, or performing other duties. Service animals are working animals, not pets. The work or task a dog has been trained to provide must be directly related to the person’s disability. Dogs whose sole function is to provide comfort or emotional support do not qualify as service animals under the ADA.

(continued, page 2)

This definition does not affect or limit the broader definition of "assistance animal" under the Fair Housing Act or the broader definition of "service animal" under the Air Carrier Access Act.

Some State and local laws also define service animal more broadly than the ADA does. Information about such laws can be obtained from that State's attorney general's office.

Where Service Animals Are Allowed

Under the ADA, State and local governments, businesses, and nonprofit organizations that serve the public generally must allow service animals to accompany people with disabilities in all areas of the facility where the public is normally allowed to go. For example, in a hospital it would be inappropriate to exclude a service animal from areas such as patient rooms, clinics, cafeterias, or examination rooms. However, it may be appropriate to exclude a service animal from operating rooms or burn units where the animal's presence may compromise a sterile environment.

Service Animals Must Be Under Control

Under the ADA, service animals must be harnessed, leashed, or tethered, unless these devices interfere with the service animal's work or the individual's disability prevents using these devices. In that case, the individual must maintain control of the animal through voice, signal, or other effective controls.

Inquiries, Exclusions, Charges, and Other Specific Rules Related to Service Animals

- When it is not obvious what service an animal provides, only limited inquiries are allowed. Staff may ask two questions: (1) is the dog a service animal required because of a disability, and (2) what work or task has the dog been trained to perform. Staff cannot ask about the person's disability, require medical documentation, require a special identification card or training documentation for the dog, or ask that the dog demonstrate its ability to perform the work or task.
- Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals. When a person who is allergic to dog dander and a person who uses a service animal must spend time in the same room or facility, for example, in a school classroom or at a homeless shelter, they both should be accommodated by assigning them, if possible, to different locations within the room or different rooms in the facility.
- A person with a disability cannot be asked to remove his service animal from the premises unless: (1) the dog is out of control and the handler does not take effective action to control it or (2) the dog is not housebroken. When there is a legitimate reason to ask that a service animal be removed, staff must offer the person with the disability the opportunity to obtain goods or services without the animal's presence.

- Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals on the premises.
- People with disabilities who use service animals cannot be isolated from other patrons, treated less favorably than other patrons, or charged fees that are not charged to other patrons without animals. In addition, if a business requires a deposit or fee to be paid by patrons with pets, it must waive the charge for service animals.
- If a business such as a hotel normally charges guests for damage that they cause, a customer with a disability may also be charged for damage caused by himself or his service animal.
- Staff are not required to provide care or food for a service animal.

Miniature Horses

In addition to the provisions about service dogs, the Department's revised ADA regulations have a new, separate provision about miniature horses that have been individually trained to do work or perform tasks for people with disabilities. (Miniature horses generally range in height from 24 inches to 34 inches measured to the shoulders and generally weigh between 70 and 100 pounds.) Entities covered by the ADA must modify their policies to permit miniature horses where reasonable. The regulations set out four assessment factors to assist entities in determining whether miniature horses can be accommodated in their facility. The assessment factors are (1) whether the miniature horse is housebroken; (2) whether the miniature horse is under the owner's control; (3) whether the facility can accommodate the miniature horse's type, size, and weight; and (4) whether the miniature horse's presence will not compromise legitimate safety requirements necessary for safe operation of the facility.

**For more information about the ADA,
please visit our website or call our toll-free number.**

ADA Website
www.ADA.gov

To receive e-mail notifications when new ADA information is available, visit the ADA Website's home page and click the link near the top of the middle column.

ADA Information Line

800-514-0301 (Voice) and 800-514-0383 (TTY)

24 hours a day to order publications by mail.

M-W, F 9:30 a.m. – 5:30 p.m., Th 12:30 p.m. – 5:30 p.m. (Eastern Time)
to speak with an ADA Specialist. All calls are confidential.

For persons with disabilities, this publication is available in alternate formats.

Duplication of this document is encouraged. July 2011



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

February 17, 2011

TO: FHEO Region Directors
Regional Counsel

FROM: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs

SUBJECT: New ADA Regulations and Assistance Animals as Reasonable Accommodations
under the Fair Housing Act and Section 504 of the Rehabilitation Act of 1973

I. Purpose

This memo explains that the Department of Justice's (DOJ) recent amendments to its Americans with Disabilities Act (ADA) regulations¹ do not affect reasonable accommodation requests under the Fair Housing Act (FHA) and Section 504 of the Rehabilitation Act of 1974 (Section 504). The DOJ's new rules limit the definition of "service animal" in the ADA to include only dogs. The new rules also define "service animal" to exclude emotional support animals. This definition, however, does not apply to the FHA or Section 504. Disabled individuals may request a reasonable accommodation for assistance animals in addition to dogs, including emotional support animals, under the FHA or Section 504. In situations where both laws apply, housing providers must meet the broader FHA/Section 504 standard in deciding whether to grant reasonable accommodation requests.

II. Definitions of Service Animal

The DOJ's new ADA rules define "service animal" as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. The new rules specify that "the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition." Thus, trained dogs are the only species of animals that may qualify as service animals under the ADA (there is a separate provision regarding miniature horses) and emotional support animals are expressly precluded from qualifying as service animals.

¹ Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56164 (Sept. 15, 2010) (to be codified at 24 C.F.R. part 35); Nondiscrimination on the Basis of Disability in State and Local Government Services, Final Rule, 75 Fed. Reg. 56236 (Sept. 15, 2010) (to be codified at 24 C.F.R. part 36).

Neither the FHAct, Section 504, nor HUD's implementing regulations contain a specific definition of the term "service animal." However, species other than dogs, with or without training, and animals that provide emotional support have been recognized as necessary assistance animals under the reasonable accommodation provisions of the FHAct and Section 504. The new ADA regulation does not change this FHAct/Section 504 analysis, and specifically notes, "[u]nder the FHAct, an individual with a disability may have the right to have an animal other than a dog in his or her home if the animal qualifies as a 'reasonable accommodation' that is necessary to afford the individual equal opportunity to use and enjoy a dwelling, assuming that the animal does not pose a direct threat."² In addition, the preambles to the new rules state that emotional support animals do not qualify as service animals under the ADA but may "nevertheless qualify as permitted reasonable accommodations for persons with disabilities under the FHAct."³

III. Applying the Law

Under the FHAct and Section 504, individuals with a disability may be entitled to keep an assistance animal as a reasonable accommodation in housing facilities that otherwise impose restrictions or prohibitions on animals. In order to qualify for such an accommodation, the assistance animal must be necessary to afford the individual an equal opportunity to use and enjoy a dwelling or to participate in the housing service or program. Further, there must be a relationship, or nexus, between the individual's disability and the assistance the animal provides. If these requirements are met, a housing facility, program or service must permit the assistance animal as an accommodation, unless it can demonstrate that allowing the assistance animal would impose an undue financial or administrative burden or would fundamentally alter the nature of the housing program or services.⁴

Under the ADA, the animal need only meet the definition of "service animal" to be covered by the law. No further test or reasonable accommodation analysis should be applied. An individual's use of a service animal in an ADA-covered facility should not be handled as a request for reasonable accommodation. If an animal qualifies as a "service animal," ADA-covered entities may not restrict access to a person with a disability on the basis of his or her use of that service animal unless the animal is out of control and its handler does not take effective action to control it or if the animal is not housebroken. The service animal must be permitted to accompany the individual with a disability to all areas of the facility where customers are normally allowed to go.

² 75 Fed. Reg. at 56194, 56268.

³ 75 Fed. Reg. at 56166, 56240.

⁴ The request may also be denied if the specific animal in question poses a direct threat to the health and safety of others that cannot be reduced or eliminated by a reasonable accommodation or if the specific animal would cause substantial physical damage to the property of others that cannot be reduced or eliminated by a reasonable accommodation.

The new ADA definition of “service animal” applies to state and local government services, public accommodations, and commercial facilities; the FHAct covers housing services and facilities; and HUD’s Section 504 regulations apply to all recipients of HUD-funds. Some types of entities, such as rental offices and housing authorities, are subject to both the service animal requirements of the ADA and the reasonable accommodation provisions of the FHAct or Section 504. Entities must ensure compliance under all relevant civil rights laws. Compliance with the ADA’s regulations does not ensure compliance with the FHAct or Section 504. An entity that is subject to both the ADA and the FHAct or Section 504 must permit access to ADA-covered “service animals” and, additionally, apply the more expansive assistance animal standard when considering reasonable accommodations for persons with disabilities who need assistance animals that fall outside the ADA’s “service animal” definition.

IV. Conclusion

The ADA regulations’ revised definition of “service animal” does not apply to reasonable accommodation requests for assistance animals in housing under either the FHAct or Section 504. Rules, policies, or practices must be modified to permit the use of an assistance animal as a reasonable accommodation in housing when its use may be necessary to afford a person with disabilities an equal opportunity to use and enjoy a dwelling, common areas of a dwelling, or participate in, or benefit from, any housing program receiving Federal financial assistance from HUD, unless an exception applies.



**U.S. Department of Housing and Urban Development
Office of Public and Indian Housing**

SPECIAL ATTENTION OF:

Regional Directors; State and Area
Coordinators; Public Housing Hub
Directors; Program Center Coordinators;
Troubled Agency Recovery Center Directors;
Special Applications Center Director;
Administrators; Offices of Native American
Programs; Public Housing Agencies; Public
Housing; Housing Choice Voucher/Section 8;
Tribally Designated Housing Entities;
Indian Tribes; Resident Management
Corporations

NOTICE: PIH-2011-22

Issued: April 26, 2011

Cross Reference:

24 CFR 903.7(e) (2)

24 CFR 990.165

7 U.S.C. 136r-1 Integrated Pest
Management

This Notice Supersedes

PIH Notice 2009-15, PIH Notice
2008-24, PIH Notice 2007-12

Subject: Promotion of Integrated Pest Management (IPM) as an environmentally-sound, economical and effective means to address a major resident concern.

1. **Purpose.** The purpose of this Notice is to promote and encourage the use of IPM by Public Housing Authorities (PHAs), Indian tribes, Tribal Designated Housing Entities (TDHEs), and owner/agents providing assistance through the HCV program. This notice provides guidance to Public Housing Authorities (PHAs) on the benefits of IPM, additional technical assistance and training opportunities for PHAs. Pest management is integral to the provision of safe and sanitary housing. In accordance with 24 CFR 903.7 (e) (2), PHAs must include in their PHA plans a description of any measures necessary for the prevention or eradication of pest infestations. IPM is an ecological approach using an array of methods to prevent and control pests with reduced reliance on pesticides. Procedures contained within this notice remain in effect until superseded by subsequent HUD Directive or guidance.
2. **Applicability.** This notice applies to PHAs administering the public housing and project based Section 8 program, and may be of interest to Indian tribes/TDHEs as well as owners/agents providing assisted housing through the Housing Choice Voucher (HCV) Program. The decision to use IPM techniques in their ongoing pest control effort is under PHA, Indian tribes/TDHE discretion. 24 CFR 990.165(a) covers cost associated with Project Expense Level (PEL) such as maintenance expenses. IPM is a maintenance expense.
3. **Background.** The goal of IPM as defined by the Environmental Protection Agency (EPA) is to control pests by the most economical long term means, and with the least possible hazard to people, property, and the environment. To undertake IPM, project managers should be committed to ongoing or continuous monitoring and record keeping, educational outreach to residents and staff as well as implementing good communication strategies between residents and building managers. IPM methods include: restricted pest access to

food/water; vigilant sanitation and waste management; mechanical control; physical barriers; structural maintenance; and, where necessary, the judicious use of pesticides.

4. **Fundamentals of IPM.** IPM efforts must involve PHA staff, contractors, residents, and include:
 - a. Communicating the PHA's IPM policies and procedures to be provided in the appropriate format to meet the needs of all residents including persons with limited English proficiency and in formats that may be needed for persons who are visually or hearing impaired. This applies to administrative staff, maintenance personnel, and contractors as well.
 - b. Identifying the environmental conditions that lead to pests and educating residents.
 - c. Identifying pests and immediately reporting the presence of pests.
 - d. Establishing an ongoing monitoring and record keeping system for regular sampling and assessment of pests, surveillance techniques, and remedial actions taken, include establishing the assessment criteria for program effectiveness. This is a highly effective preventative measure that can help reduce the possibility of a pest infestation outbreak.
 - e. Determining, with the involvement of residents, the pest population levels – by species – that will be tolerated, and setting thresholds at which pest populations warrant action.
 - f. Improving waste management and pest management methods.
 - g. Selecting the appropriate pesticides and insecticides to use. Some residents may suffer from Multiple Chemical Sensitivity or other Environmental Illnesses.
 - h. Ongoing efforts to monitor and maintain structures and grounds (e.g., sealing cracks, eliminating moisture intrusion/accumulation) and adding physical barriers to pest entry and movement.
 - i. Developing an outreach/educational program to ensure that leases reflect residents' responsibilities for: (1) proper housekeeping, which includes sanitation upkeep and the reduction of clutter, trash removal and storage, (2) immediately reporting the presence of pests, leaks, and mold, (3) cooperating with PHA specific IPM requirements such as obtaining permission of PHA management before purchasing or applying any pesticides, and (4) avoiding introduction of bed bugs and other pests into buildings on used mattresses and other recycled furniture. See "Preventing and Getting Rid of Bed Bugs Safely," New York City Department of Health and Mental Hygiene <http://www.nyc.gov/html/doh/downloads/pdf/vector/bed-bug-guide.pdf>
 - j. Check with local health department to determine if your state has laws for re-used furnishings.
 - k. The judicious use of pesticides when necessary, with preference for products that, while producing the desired level of effectiveness, pose the least harm to human health and the environment. Residents should notify PHA management before pesticides are applied.
 - l. Providing and posting "Pesticide Use Notification" signs or other warnings.
5. **Health Concerns.** Pests may adversely impact the health of residents and contribute to worsening some diseases, such as allergies and asthma. Cockroaches can cause asthma in children and can transfer disease-causing organisms to food and surfaces they contaminate. Rodents, such as mice and rats, carry disease, can trigger asthma attacks and even cause fires by gnawing through electrical wires. Although bed bugs are not known to transmit infectious diseases, their bites can lead to secondary infections. Bed bugs can cause

emotional distress and sleep deprivation for residents as well. Bed bug infestations can spread quickly and must be treated aggressively. All pest control methods are targeted to protecting the health of residents and staff. Although applying pesticides may be effective in eliminating pest populations, many of these chemicals are associated with health and/or environmental risks, and their use should be minimized if alternative methods exist. This is especially important in buildings housing vulnerable age groups such as children or the elderly and in buildings housing residents with compromised immune systems or who may suffer from Multiple Chemical Sensitivity and other environmental illnesses. Therefore, IPM offers the potential to ensure efficacy of pest elimination while protecting the health of residents, staff and the environment.

6. **Building.** Most of the effective methods of pest elimination, including ongoing repairs, erection of barriers, and monitoring, will extend the useful life of a building and as a result generate significant savings that could offset the costs of the pest control. Many of these non-application methods, including structural maintenance, and inspecting for and repairing leaking pipes and cracks in roofs, walls, and windows are effective in preventing moisture intrusion and accumulation. Additionally, IPM-conscious PHAs assess the need to install physical barriers to both pest entry and pest movement within every structure thereby reducing the spread of pest infestations.
7. **Implementation.** HUD promotes IPM as a pest control method. IPM effectively eliminates pests in safer and long term cost-effective ways than traditional pesticide treatments. IPM frequently has proven to be more effective in reducing pest populations than relying solely on broadcast pesticides. The Boston Housing Authority (BHA) experienced approximately one-third reduction in pest related work orders over multiple years in multiple sites. BHA has maintained this reduction and now uses IPM in all its BHA maintained properties. Continuation of the IPM program after initial development cost is considered preventative maintenance expense and is an eligible program activity under the Public Housing Operating Subsidy as codified at 24 CFR 990.165. Successful IPM requires resident participation through proper housekeeping, reporting of pest infestations, and trash removal. Residents can monitor pest populations and assist in identifying how to eliminate access to food and water for pests. Resident organizations must be prepared to assist residents who need help to follow the IPM policy. HUD encourages PHAs to partner with local pest management organizations.
8. **Procurement of IPM Services.** If a PHA uses an outside contractor for pest control, the PHA's pest control/IPM policies and procedures should be incorporated into the specifications or statement of work for the pest management contract. PHAs using an outside contractor are encouraged to use companies that are trained and certified to provide IPM services either through Green Shield certified (<http://www.greenshieldcertified.org/>) or Green Pro (<http://www.npmagreenpro.org/>). The PHA should also consider training for maintenance staff, residents, Resident Councils as well as PHA administrative staff who oversee housing developments or administer occupancy and rental duties such as unit housekeeping inspections.
9. **PHA Maintenance Staff.** If a PHA uses its own maintenance staff for pest management, proper training in the PHA's IPM procedures is essential. It is especially critical to be trained in the proper treatments methods PHAs can use when treating for bed bugs. The contract administrator for any pest management contract should be trained as well. Successful results rely upon proper implementation; training is therefore of critical

importance. IPM training is available at: <http://www.stoppests.org/> and <http://www.healthyhomestraining.org/ipm/training.htm>.

10. **Area of High Concern, Bed bugs.** As the number of bed bug infestations rise throughout the country, HUD is in the process of developing protocols to address this growing problem. HUD is addressing the unit inspection process as well as developing the tools necessary for PHAs to identify, treat and monitor the effectiveness of bed bug treatments in its portfolio. Identifying, reporting, treating and monitoring pest infestations are all critical components of IPM and are effective in addressing the bed bug problem.
11. **Reference Materials for Implementing IPM.** The below list of IPM practices does not constitute a HUD endorsement of any specific practice, but provides IPM ideas and practices that have been used to improve pest management while reducing unnecessary dependence on pesticides. HUD encourages PHAs, Indian tribes/TDHEs to share their policies, procedures, resident leases, and written case studies so that these may be published on the HUD website for others to read.
 - a. National Center for Healthy Housing: <http://www.healthyhomestraining.org/ipm>
 - b. Bed Bugs: “What’s Working for Bed Bug Control in Multi-family Housing”
http://www.healthyhomestraining.org/ipm/NCHH_Bed_Bug_Control_2-12-10.pdf
<http://pestworld.org/pest-world-blog/the-bed-bug-hub-one-stop-shop-for-bed-bug-information>
 - c. National Pesticide Information Center: <http://www.npic.orst.edu/>
 - d. Integrated Pest Management (IPM), A Guide for Managers and Owners of Affordable Housing, Boston Public Health Commission:
http://http://asthmaregionalcouncil.org/uploads/IPM/asthma_ipm_guide.pdf.
 - e. U.S. Environmental Protection Agency:
 - i. General IPM information <http://www.epa.gov/opp00001/contolling/index.htm>
housing): <http://www.epa.gov/pesticides/ipm>
 - ii. EPA staff contacts: <http://www.epa.gov/pesticides/about/contacts.htm#ipm>
 - iii. List of EPA IPM publications and instructions for ordering documents:
<http://www.epa.gov/oppfead1/Publications/catalog/subpage3.htm>
 - f. Massachusetts Department Agriculture Resources – Building Managers and Landlords:
http://www.mass.gov/agr/pesticides/docs/CIB_Building_Managers.pdf
 - g. HUD funded “Healthy Public Housing Project” conducted by the Harvard School of Public Health In Boston Public Housing, <HTTP://www.hsph.harvard.edu/hphi/>
 - h. Bed Bug Fact Sheets in English and Spanish produced by Dr. Dini Miller,
<http://www.vdacs.virginia.gov/pesticides/bedbugs-facts.shtml>
12. **PHA Case Studies On IPM Application.**
 - i. Cuyahoga Housing Authority:
http://www.healthyhomestraining.org/ipm/Case_Study_Cuyahoga_10-20-07.pdf
 - ii. Boston Housing Authority:
http://www.healthyhomestraining.org/ipm/casestudy_holgate.pdf
 - iii. New York City Department of Health, Columbia University and the New York City Housing Authority: <http://www.beyondpesticides.org/dailynewsblog/?p=1604>

13. For further information contact Leroy Ferguson at (202) 402-2411 or email at Leroy.Ferguson@hud.gov or you can contact the nearest HUD Field Office of Public Housing

within your state. Indian tribes and TDHEs should contact the nearest HUD Office of Native American Programs. Locations of these offices are available on HUD's website at <http://www.hud.gov>.

_____/s/_____
Sandra B. Henriquez, Assistant Secretary for
Public and Indian Housing



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410

**Statement of the Department of Housing and Urban Development on
the Role of Housing in Accomplishing the Goals of *Olmstead***

The Department of Housing and Urban Development (HUD) is issuing this guidance to provide information about *Olmstead*, to clarify how recipients of federal financial assistance from HUD can assist state and local *Olmstead* efforts, and to encourage housing providers to support *Olmstead* implementation by increasing the integrated housing opportunities that are available for individuals with disabilities who are transitioning from, or at serious risk of entering, institutions, hospitals, nursing homes, adult care facilities, and other restrictive, segregated settings.¹

Individuals with disabilities have historically faced discrimination that limited their opportunity to live independently in the community and required them to live in institutions and other segregated settings.² In 1999, the United States Supreme Court issued the landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), affirming that the unjustified segregation of individuals with disabilities is a form of discrimination prohibited by Title II of the Americans with Disabilities Act (ADA). Following the *Olmstead* decision, there have been increased efforts across the country to assist individuals who are institutionalized or housed in other segregated settings to move to integrated, community-based settings. In addition, states are “rebalancing” health care delivery systems by shifting away from an overreliance on providing long-term services and supports to individuals with disabilities in institutions, hospitals, nursing homes, adult care facilities, and other restrictive, segregated settings and moving towards a greater reliance on home- and community-based services. For many states, these efforts to comply with *Olmstead* and rebalance the way long-term services and supports are provided by moving individuals out of institutions and into the community are confounded by a lack of integrated housing options for individuals with disabilities. As a result, there is a great need for affordable, integrated housing opportunities where individuals with disabilities are able to live and interact with individuals without disabilities, while receiving the health care and long-term services and supports they need.

Individuals with disabilities, like individuals without disabilities, should have choice and self-determination in housing and in the health care and related support services they receive. For this reason, HUD is committed to offering individuals with disabilities housing options that enable them to make meaningful choices about housing, health care, and long-term services and supports so they can participate fully in community life. As more states facilitate the transition of individuals with disabilities from institutional or other segregated settings into their

¹ Recipients of HUD assistance include, but are not limited, to: states, units of local government, public housing agencies, nonprofit organizations, and developers of multifamily properties. Recipients do not include the individual beneficiaries of HUD-funded programs and activities.

² As used in this guidance, the term “individuals with disabilities” refers to the term as defined in federal nondiscrimination statutes.

communities, the need for meaningful choice among housing options is critical. For communities that have historically relied heavily on institutional settings and housing built exclusively or primarily for individuals with disabilities, the need for additional integrated housing options scattered throughout the community becomes more acute.

HUD programs serve as an important resource for affordable housing opportunities for individuals with disabilities, including individuals who are transitioning out of, or at serious risk of entering, institutions. HUD funds the operation, management, development, preservation, and rehabilitation of affordable housing. HUD's portfolio includes tenant-based housing vouchers, apartment buildings that serve a wide variety of individuals and families, and numerous other programs that provide permanent and transitional housing with or without supportive services to individuals with and without disabilities.

HUD is committed to providing individuals with disabilities a meaningful choice in housing and the delivery of long-term health care and support services. To that end, HUD is exploring how it can fund additional integrated housing units scattered throughout communities. HUD also continues to fund single site supportive housing that is statutorily permitted to house and provide voluntary supportive services to individuals with disabilities in some or all of the units. In addition, HUD is exploring how existing HUD-assisted housing can provide individuals with disabilities increased opportunities to exercise autonomy, independence, and self-determination in living arrangements that have the comforts and qualities of home.

HUD is taking this opportunity to advise housing providers, as they manage their portfolios of housing and develop new housing to meet the needs of individuals with disabilities, to consider the particular housing needs in their individual communities and in their state. HUD encourages public housing agencies (PHAs) and other housing providers receiving federal financial assistance from HUD to partner with state and local governments to provide additional community-based, integrated housing opportunities for individuals with disabilities transitioning out of, or at serious risk of entering, institutions or other segregated settings. This guidance is consistent with efforts across federal agencies and in many states to provide appropriate health care and related supports and services for individuals with disabilities in the most integrated setting appropriate to their needs.

As part of these efforts, HUD is working with its federal partners to align policies and promote understanding of the integration mandate of the ADA and Section 504 of the Rehabilitation Act of 1973 (Section 504). While the information provided in this guidance will be helpful to individuals with disabilities and anyone engaged in the funding, development, or operation of housing, the scope of this guidance is limited to HUD funding and programs. HUD interprets the Fair Housing Act and its Section 504 regulations. This guidance does not interpret the nondiscrimination requirements administered by other agencies. For example, Congress has delegated to the Department of Justice the authority to interpret Title II of the ADA.

Background on *Olmstead* and the Integration Mandate under Section 504 and the ADA

Section 504

Section 504 prohibits discrimination against individuals with disabilities by the federal government and those receiving federal financial assistance. Section 504 states:

No otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.³

Every recipient of federal financial assistance from HUD is subject to Section 504 and HUD's Section 504 implementing regulations at 24 C.F.R. part 8. This includes both public and private entities. Section 504 regulations covering HUD's own conduct are located at 24 C.F.R. part 9.

Among other things, HUD's Section 504 regulations require HUD and entities that receive federal financial assistance from HUD to administer their programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.⁴ A "qualified" individual with disabilities is one who meets the essential eligibility requirements for participation in or receipt of benefits from that program or activity with or without reasonable accommodations.⁵ Under Section 504, individuals with disabilities also cannot be denied the opportunity to participate in an integrated program, despite the existence of separate programs for persons with disabilities.⁶ While different HUD programs have various program and eligibility requirements, HUD and all recipients of federal financial assistance from HUD have the obligation to administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

The ADA and Olmstead

Title II of the ADA and its implementing regulations extend this integration requirement to all services, programs, and activities administered by public entities (primarily state and local government entities) regardless of whether these entities receive federal funding.⁷ Congress specifically mandated that the ADA regulations be consistent with Section 504 coordination regulations.⁸

The landmark 1999 *Olmstead v. L.C.* Supreme Court decision concerned discrimination claims by two Georgia women with developmental disabilities and mental illness who were in a state psychiatric hospital, able to live in the community, but nonetheless remained hospitalized against their wishes and against the recommendations of their treating physicians. The Court's decision acknowledged that segregating individuals with disabilities in institutional settings deprives them

³ 29 U.S.C. § 794.

⁴ 24 C.F.R. §§ 8.4(d), 9.130(d).

⁵ 24 C.F.R. § 8.3 (defining "qualified" individuals with disabilities).

⁶ 24 C.F.R. § 8.4(b)(3).

⁷ 42 U.S.C. §§ 12131-12134; 28 C.F.R. § 35.130(d).

⁸ 42 U.S.C. § 12134(b).

of the opportunity to participate in their communities, interact with individuals who do not have disabilities, and make their own day-to-day choices; it also recognized that unnecessary institutionalization stigmatizes individuals with disabilities, reinforcing misperceptions about their capacities and negative stereotypes. Thus, the promise of *Olmstead* is that individuals with disabilities be given meaningful opportunities to live, work, and receive services in integrated settings.

The Supreme Court ruled that the ADA prohibits the unjustified segregation of individuals with disabilities, which means that states and localities cannot require that individuals with disabilities reside in nursing homes, state psychiatric hospitals, or other institutional settings in order to receive necessary services if those services could reasonably be provided in integrated, community-based settings. Specifically, the Court held that public entities must provide services to individuals with disabilities in community settings rather than institutions when: 1) such services are appropriate to the needs of the individual; 2) the affected persons do not oppose community-based treatment; and 3) community-based services can be reasonably accommodated, taking into account the resources available to the public entity and the needs of others who are receiving disability-related services from the entity.⁹

In reaching this conclusion, the Court relied on Congress' findings in enacting the ADA that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem."¹⁰

The *Olmstead* decision—and subsequent voluntary *Olmstead* planning and implementation, litigation by groups representing individuals with disabilities, and Department of Health and Human Services and Department of Justice enforcement efforts—are creating a dramatic shift in the way services are delivered to individuals with disabilities. While, historically, state health and long-term care systems have been heavily weighted toward using institutions, hospitals, nursing homes, adult care facilities, and other restrictive, segregated settings to provide long-term services and supports for individuals with disabilities, states have been rebalancing their systems away from institutions and steadily increasing the array of services that can be provided with Medicaid funding in home- and community-based settings.

The integration mandate of the ADA and *Olmstead* compels states to offer community-based health care services and long-term services and supports for individuals with disabilities who can live successfully in housing with access to those services and supports. In practical terms, this means that states must find housing that enables them to assist individuals with disabilities to transition out of institutions and other segregated settings and into the most integrated setting appropriate to the needs of each individual with a disability. A critical consideration in each state is the range of housing options available in the community for individuals with disabilities and whether those options are largely limited to living with other individuals with disabilities, or whether those options include substantial opportunities for individuals with disabilities to live and interact with individuals without disabilities.

⁹ *Olmstead*, 527 U.S. at 607.

¹⁰ *Olmstead*, 527 U.S. at 600 (quoting 42 U.S.C. § 12101(a)(2) and citing 42 U.S.C. § 12101(a)(5)).

The Centers for Medicare & Medicaid Services (CMS) have supported efforts by states to rebalance their health care systems from institutional to community-based care. For example, the Money Follows the Person (MFP) program, authorized by Congress in 2005 and extended in 2010 under the Patient Protection and Affordable Care Act (ACA), authorizes CMS to offer incentives to states to assist them in rebalancing their long-term care system to a more home-and community-based orientation by, among other things, providing an enhanced federal match on services and supports for individuals who transition to community-based settings from institutional care. Individuals with disabilities have encountered a consistent barrier to using state MFP programs to transition out of institutions: a lack of accessible, affordable housing, and in particular, a lack of integrated housing options scattered throughout the community where individuals with disabilities can receive the support services they need from a service provider of their choosing.

The following questions and answers discuss HUD's efforts to support *Olmstead* enforcement and compliance and to provide further guidance on the application of the integration mandate in the administration of programs and activities that receive federal financial assistance from HUD.

Questions and Answers on *Olmstead* and the Integration Mandate under Section 504 and the ADA

1. What does the most integrated setting mean and how does an integrated setting differ from a segregated setting?

In its 1991 rulemaking implementing Title II of the ADA, the U.S. Department of Justice defined “the most integrated setting appropriate to the needs of qualified individuals with disabilities” as “a setting that enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible.”¹¹ The Department of Justice reinforced this definition in 2011 when it issued a statement on enforcement of the integration mandate of Title II of the ADA and *Olmstead* (DOJ *Olmstead* Statement)¹² and described the following additional characteristics of integrated settings as:

those that provide individuals with disabilities opportunities to live, work, and receive services in the greater community, like individuals without disabilities. Integrated settings are located in mainstream society; offer access to community activities and opportunities at times, frequencies and with persons of an individual's choosing; afford individuals choice in their daily life activities; and provide individuals with disabilities the opportunity to interact with non-disabled persons to the fullest extent possible.¹³

¹¹ 56 Fed. Reg. 35694 (1992), codified at 28 C.F.R. pt. 35, app. B.

¹² *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C. (DOJ Olmstead Statement)*, http://www.ada.gov/olmstead/q&a_olmstead.htm. The Department of Justice is the agency charged with coordination of Section 504 and Title II of the ADA.

¹³ *DOJ Olmstead Statement*, http://www.ada.gov/olmstead/q&a_olmstead.htm.

Within the context of housing, integrated settings enable individuals with disabilities to live like individuals without disabilities.¹⁴ Integrated settings also enable individuals with disabilities to live independently with individuals without disabilities and without restrictive rules that limit their activities or impede their ability to interact with individuals without disabilities. Examples of integrated settings include scattered-site apartments providing permanent supportive housing, tenant-based rental assistance that enables individuals with disabilities to lease housing in integrated developments, and apartments for individuals with various disabilities scattered throughout public and multifamily housing developments.

By contrast, segregated settings are occupied exclusively or primarily by individuals with disabilities. Segregated settings sometimes have qualities of an institutional nature, including, but not limited to, regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, limits on individuals' ability to engage freely in community activities and manage their own activities of daily living, or daytime activities primarily with other individuals with disabilities.¹⁵

2. Does HUD work with state and local governments to assist in *Olmstead* planning and implementation efforts?

Yes. HUD works with state and local governments to assist in *Olmstead*-related work. HUD encourages public housing agencies and other recipients of HUD assistance to partner with state and local governments in *Olmstead* implementation. States and local jurisdictions engaged in *Olmstead*-related litigation, *Olmstead* settlements, or documented, voluntary, affirmative *Olmstead* planning and implementation efforts are encouraged to consult local HUD grantees to discuss potential housing options in their communities. Such entities may also contact HUD for technical assistance on these issues.

3. How can HUD housing programs support state and local governments' efforts to comply with *Olmstead*?

HUD is a resource for housing that may be available to individuals transitioning from, or at serious risk of entering, institutions or other segregated settings. As a result of *Olmstead* enforcement efforts by the Department of Justice, litigation by groups representing individuals with disabilities, and voluntary *Olmstead*-related planning and implementation, state and local governments are taking actions to assist individuals with disabilities to transition out of institutions and other segregated settings and into integrated housing. They are making arrangements to ensure that individuals at serious risk of institutionalization receive the necessary support services and housing so they may live in housing throughout the community. HUD's housing programs play a significant role because they offer affordable and integrated housing opportunities for such individuals.

HUD is also taking this opportunity to advise housing providers, as they develop new supportive housing, to consider the particular housing needs in individual states. HUD is committed to offering housing options for individuals with disabilities that enable them to participate fully in

¹⁴ See 24 C.F.R. § 8.4(b)(1)(iv).

¹⁵ See DOJ *Olmstead* Statement, http://www.ada.gov/olmstead/q&a_olmstead.htm.

their communities. As the need for new, integrated supportive housing options becomes more acute, HUD's objective is to offer additional integrated housing opportunities so that individuals with disabilities have the choice to live in housing with individuals without disabilities while also having access to services they need and service providers they choose. For example, in response to the need for housing tied to rebalancing initiatives, in 2009, Congress appropriated funding to aid non-elderly persons with disabilities. HUD allocated a portion of this funding for Housing Choice Vouchers designated for use by those persons as they transition from an institution to the community.

HUD encourages public housing agencies and other HUD-assisted housing providers to work with state and local governments to provide integrated, affordable and accessible housing options for individuals with disabilities who are transitioning from, or at serious risk of entering, institutions or other segregated settings. For example, public housing agencies, pursuant to PIH Notice 2012-31, and other recipients of HUD assistance may offer certain preferences that will enable individuals with disabilities to transition from institutions more quickly or enable an individual at serious risk of institutionalization to remain in integrated, affordable housing in the community.

HUD encourages implementing appropriate preferences that support *Olmstead* efforts. Preferences give priority to a designated subgroup of eligible individuals. General preferences for individuals with disabilities who are transitioning from or at serious risk of entering an institutional setting are permissible. Preferences that target individuals with specific disabilities or diagnoses may be authorized in connection with remedial actions undertaken pursuant to Department of Justice enforcement, *Olmstead*-related settlements or litigation, and state and local governments' voluntary, documented affirmative *Olmstead* planning and implementation efforts.¹⁶ Because they can only be authorized as remedial actions, any preference that targets individuals with specific disabilities must be reviewed and approved by the Office of General Counsel's Office of Fair Housing at HUD. PHAs must also request a waiver of HUD's program regulations precluding disability-specific preferences. HUD is working to streamline the approval process and will work with PHAs and other recipients to complete the approval process expeditiously. Public housing agencies and other recipients interested in implementing preferences to assist with *Olmstead* implementation may contact the Office of General Counsel's Office of Fair Housing in HUD headquarters for guidance regarding the types of preferences that may be offered.

In addition, a public housing agency is permitted to authorize a preference consistent with the provisions of a grant awarded under Section 811 Project Rental Assistance (PRA) even when such a preference may be for individuals with specific disabilities or diagnoses (or for individuals referred from agencies or institutions that exclusively provide services for individuals with specific disabilities or diagnoses). This is because the Section 811 PRA program is intended to support states in implementing *Olmstead* settlements, or undertaking voluntary, affirmative *Olmstead* implementation efforts and because such preferences are approved by the Office of General Counsel's Office of Fair Housing at HUD and the Assistant Secretary for Public and Indian Housing, as part of HUD's award of funds under a Section 811 PRA grant.

¹⁶ 24 C.F.R. §§ 960.206(b)(3), 982.207(b)(3).

4. Are there instances where recipients of HUD assistance may operate housing or services limited to individuals with disabilities or individuals with specific disabilities or diagnoses?

Yes. Some programs funded by HUD have express federal statutory authority to limit eligibility to individuals with disabilities. Examples include the Housing Opportunities for Persons With AIDS (HOPWA) program, Section 811 Supportive Housing for Persons with Disabilities, Section 202 housing developments for non-elderly persons with disabilities funded prior to 1991, certain McKinney-Vento homeless assistance programs, HUD-VASH vouchers, designated public housing under Section 7 of the Housing Act of 1937, and project-based voucher (PBV) assistance under Section 8(o)(13) of the Housing Act of 1937. Some of these programs offer housing settings occupied exclusively by individuals with disabilities, some offer housing opportunities in integrated settings, and some may offer both.

HUD's regulations implementing Section 504 restrict when participation in a federally-funded program or activity can be limited to individuals with disabilities or individuals with specific disabilities.¹⁷ For further information about specific HUD programs for individuals with disabilities, consult HUD's Office of Fair Housing and Equal Opportunity or the relevant HUD program office.

5. Does this guidance change the requirements of any existing HUD program?

No. This guidance does not change the requirements for any existing HUD-funded or assisted housing programs, including programs that have explicit statutory authority to operate housing occupied exclusively by individuals with disabilities or individuals with specific types of disabilities or diagnoses. Housing providers may continue to develop and operate project-based or single-site supportive housing projects for individuals with disabilities in accordance with the statutory authority for individual programs. For example, the project-based voucher (PBV) program has statutory authority but is not required to commit up to 100% of PBV units in a project to individuals with disabilities. There are also HUD programs that authorize single-site permanent supportive housing projects for individuals with disabilities.

HUD encourages providers to explore various housing models and the needs of their communities. As more states and local jurisdictions assist in transitioning individuals from institutions and other segregated settings into their communities because of *Olmstead* implementation and enforcement, the need for new, integrated affordable housing will become more acute. Meaningful choice and self-determination for individuals with disabilities are paramount. In addition, states and local jurisdictions may limit referrals to housing occupied by large percentages of individuals with disabilities.

Moreover, as state and local entities increasingly provide health care and support services to individuals with disabilities in integrated, community-based housing because of *Olmstead* and efforts to rebalance the delivery of health care services, HUD encourages housing developers and providers to explore state-specific conditions to assess the continued viability of different housing models as they relate to future referrals and the future availability of Medicaid and other funding for services.

¹⁷ 24 C.F.R. §§ 8.4, 9.130.

As part of its own obligations to administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, HUD is reviewing its housing programs to determine how it can facilitate greater housing choice by increasing integrated housing opportunities for individuals with disabilities, consistent with an individual's informed choice and right of self-determination.¹⁸

6. How does HUD's support for *Olmstead* enforcement and implementation efforts intersect with the goals of ending homelessness?

HUD's support for *Olmstead* enforcement and implementation efforts aligns with the goals of ending homelessness, especially chronic homelessness, as some individuals with disabilities may be chronically homeless and at serious risk of institutionalization.¹⁹ In addition, individuals with disabilities who transition out of institutions may become homeless or end up returning to institutions if not provided the housing, health care and related services and supports they need to live independently in the community. State *Olmstead* efforts are an opportunity for states to create more community-based services that support housing stability for individuals with disabilities who are experiencing homelessness.

7. What role does the Fair Housing Act play?

The Fair Housing Act (FHAct) protects against discrimination on the basis of disability.²⁰ The FHAct's broad protections for individuals with disabilities include prohibiting refusals to sell or rent and discriminatory statements, prohibiting disability-related inquiries, requiring accessible features in new multifamily construction, requiring reasonable accommodations, and requiring reasonable modifications.²¹ In addition, the FHAct prohibits actions that "restrict or attempt to restrict the choices of a person by word or conduct in connection with seeking, negotiating for, buying or renting a dwelling so as to perpetuate, or tend to perpetuate, segregated housing patterns, or to discourage or obstruct choices in a community, neighborhood or development" based on disability.²² Unlawful actions include assigning any person to a particular section of a community, neighborhood, or development, or to a particular floor of a building, based on disability.²³ Recipients may not subject individuals with disabilities to rules that do not apply to other residents, such as rules restricting their use of the housing or their ability to interact with individuals without disabilities.

In addition, Section 808(e)(5) of the FHAct imposes a duty on HUD to affirmatively further the purposes of the Fair Housing Act in its housing and urban development programs. Accordingly, HUD requires recipients of HUD assistance to take affirmative steps to further fair housing.

¹⁸ See 24 C.F.R. § 9.130(d).

¹⁹ HUD program regulations define a disabling condition associated with chronic homelessness as a diagnosable substance abuse disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from brain injury, or chronic physical illness or disability, including the co-occurrence of two or more of these conditions. See 24 C.F.R. § 578.3 (Continuum of Care Interim Regulation).

²⁰ 42 U.S.C. §§ 3601-19.

²¹ See, e.g., 42 U.S.C. § 3604(c), (f).

²² 24 C.F.R. § 100.70(a).

²³ 24 C.F.R. § 100.70(c)(4).

The affirmatively furthering fair housing (AFFH) obligation offers an opportunity for HUD and for recipients of HUD assistance to support *Olmstead* implementation by engaging in activities that will benefit individuals transitioning from institutions or at serious risk of institutionalization by providing integrated, affordable and accessible housing options in community-based settings. As an example, within HUD-funded programs that focus on rehabilitation or new construction of housing, AFFH activities may include providing integrated, affordable housing opportunities for individuals with disabilities. Strategic planning practices would take into account other housing available in the surrounding area, the availability of accessible transportation, and other factors that may provide for greater opportunity for integration in the community. Further, housing and facilities must be accessible for individuals with disabilities in accordance with federal accessibility requirements. Consistent with HUD guidance, recipients may also develop or rehabilitate units that contain universal accessibility and visitability features that go beyond the minimum accessibility requirements established by federal laws and regulations.

For programs that include or require marketing, community-based education, and/or outreach, affirmative marketing activities include making the availability of the affordable housing units or other new development widely known throughout the market area, including to individuals transitioning from institutional care, and designing and implementing initiatives that maximize communication with and dissemination of information to individuals unlikely to have access to information or benefits, including individuals with various disabilities.

These examples represent only a sample of the ways that recipients may work towards meeting their AFFH obligation while at the same time supporting the goals of *Olmstead*. HUD encourages applicants and recipients of HUD funding to consider innovative ways to further the integration of individuals with disabilities throughout their communities.

8. Does the integration of individuals with disabilities within HUD's programs mean that individuals with disabilities should always be subject to the same program terms and conditions as individuals without disabilities?

No. Providing integrated housing does not equate to always treating individuals with disabilities in the identical manner in which individuals without disabilities are treated. In fact, in some cases, it is necessary to provide individuals with disabilities with different conditions in order to comply with the Fair Housing Act, Section 504 of the Rehabilitation Act, and the ADA. These laws require reasonable accommodations/modifications in rules, policies, practices, or services when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling or the common areas of a dwelling, or to participate in or have equal access to federally funded programs and activities.²⁴

Examples of reasonable accommodations/modifications required by Section 504 and the ADA include allocating an extra bedroom for a person with a disability when a disability-related need is established for the accommodation, *e.g.*, medical equipment or live-in aide, or approving an exception payment standard in the Housing Choice Voucher Program to ensure that a family can rent a unit that meets the needs of a family member with disabilities. In the application and

²⁴ 42 U.S.C. § 3604(f)(3)(B)(FHAAct); 29 U.S.C. § 794 (Section 504); 42 U.S.C. § 12131 *et. seq.* (ADA).

admissions process, reasonable accommodations may include extending limited application periods and permitting flexible application procedures or locations. These are just examples and every reasonable accommodation request requires an individualized assessment on a case-by-case basis.

Furthermore, the Fair Housing Act makes it unlawful for any person to refuse to permit a person with a disability, at his or her expense, to make reasonable physical modifications to his or her dwelling or other premises when those modifications are necessary to afford him or her the full enjoyment of the premises.²⁵ When federal financial assistance is provided, Section 504 and HUD's Section 504 regulations require a housing provider to make and pay for structural changes to units and public use and common areas to accommodate a person with a disability.²⁶

9. How can I find more information?

For more information on public entities' obligations under *Olmstead*, please refer to the *Statement of the Department of Justice on Enforcement of the Integration Mandate of Title II of the Americans with Disabilities Act and Olmstead v. L.C.*²⁷ Individuals may also contact the Department of Justice and refer to resources online at www.ADA.gov or by calling the ADA Information Line at (800) 514-0301 (voice) or (800) 514-0383 (TTY).

For more information on the integration mandate under Section 504 and HUD's support of *Olmstead* enforcement and implementation efforts, please contact Jeanine Worden, Associate General Counsel for Fair Housing, Jeanine.M.Worden@HUD.gov, or Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Sara.K.Pratt@HUD.gov.

²⁵ 42 U.S.C. § 3604(f)(3)(A); 24 C.F.R. § 100.203.

²⁶ 29 U.S.C. § 794; 24 C.F.R. §§ 8.20; 8.21; 8.24; 8.33.

²⁷ http://www.ada.gov/olmstead/q&a_olmstead.htm.



**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF FAIR HOUSING AND EQUAL OPPORTUNITY**



**U.S. DEPARTMENT OF JUSTICE
CIVIL RIGHTS DIVISION**

Washington, D.C. April 30, 2013

**JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT AND THE DEPARTMENT OF JUSTICE**

***ACCESSIBILITY (DESIGN AND CONSTRUCTION) REQUIREMENTS FOR COVERED
MULTIFAMILY DWELLINGS UNDER THE FAIR HOUSING ACT***

Introduction

The Department of Justice (“DOJ”) and the Department of Housing and Urban Development (“HUD”) are jointly responsible for enforcing the federal Fair Housing Act (the “Act”),¹ which prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, familial status, and disability.² One of the types of disability discrimination prohibited by the Act is the failure to design and construct covered multifamily dwellings with certain features of accessible design. See 42 U.S.C. § 3604(f). This Joint Statement provides guidance regarding the persons, entities, and types of housing and related facilities that are subject to the accessible design and construction requirements of the Act (hereinafter, “design and construction requirements”). See 42 U.S.C. § 3604(f)(3).

¹ The Fair Housing Act is codified at 42 U.S.C. §§ 3601-3619.

² The Act uses the term “handicap” instead of “disability.” Both terms have the same legal meaning. See *Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) (noting that definition of “disability” in the Americans with Disabilities Act is drawn almost verbatim “from the definition of ‘handicap’ contained in the Fair Housing Amendments Act of 1988”). This document uses the term “disability,” which is more generally accepted.

This Joint Statement does not focus on the specific technical criteria that must be followed to comply with the design and construction requirements because HUD has already provided rulemaking and specific technical guidance to the public on those criteria. See HUD regulations implementing the design and construction provisions at 24 C.F.R. § 100.200 et seq.; Final Fair Housing Accessibility Guidelines (“Guidelines”), 56 Fed. Reg. 9,472 (Mar. 6, 1991); Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines (“Questions and Answers”), 59 Fed. Reg. 33,362 (June 28, 1994); Fair Housing Act Design Manual (“Design Manual”) (August 1996, Revised April 1998)³. For additional technical assistance, see the Fair Housing Act Accessibility FIRST website, www.fairhousingfirst.org. This Joint Statement also does not focus on the accessibility requirements applicable to housing and related facilities under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (1990), the Architectural Barriers Act (1968), and state or local laws. Housing providers involved in designing and constructing covered multifamily dwellings are also subject to the other nondiscrimination provisions of the Fair Housing Act, including the obligations to provide reasonable accommodations and allow reasonable modifications. See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act (May 17, 2004) and Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications under the Fair Housing Act (Mar. 5, 2008), at <http://www.hud.gov/offices/fheo/disabilities/index.cfm> or http://www.justice.gov/crt/about/hce/about_guidance.php. Further information about all of the Fair Housing Act’s nondiscrimination requirements is available on HUD’s Fair Housing website, which may be accessed at <http://www.hud.gov/offices/fheo/index.cfm>, and DOJ’s Fair Housing website, which may be accessed at http://www.justice.gov/crt/about/hce/housing_coverage.php.

QUESTIONS AND ANSWERS

Accessibility Requirements of the Fair Housing Act

1. What are the accessible features required by the Act?

The Act requires that covered multifamily dwellings be designed and constructed with the following accessible features:

- The public and common use areas must be readily accessible to and usable by persons with disabilities;
- All doors designed to allow passage into and within all premises of covered dwellings must be sufficiently wide to allow passage by persons with disabilities, including persons who use wheelchairs;
- All premises within covered dwellings must contain the following features: ○ An accessible route into and through the dwelling unit;

³ All references to the Fair Housing Act Design Manual are to the August 1996 edition revised and republished April 1998.

- Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations;
- Reinforcements in bathroom walls to allow the later installation of grab bars;
- Usable kitchens and bathrooms such that an individual using a wheelchair can maneuver about and use the space.

See 42 U.S.C. § 3604(f)(3)(C).

To describe these requirements in more detail, HUD published the Fair Housing Act regulations (“Regulations”) at 24 C.F.R. Part 100 on January 23, 1989, the Guidelines on March 6, 1991, the Questions and Answers on June 28, 1994, and the Design Manual (issued in 1996 and revised and republished in 1998). In the Guidelines, the above statutory provisions appear as seven requirements, as follows:

- Requirement 1. Accessible building entrance on an accessible route.
- Requirement 2. Accessible and usable public and common use areas.
- Requirement 3. Usable doors.
- Requirement 4. Accessible route into and through the covered dwelling unit.
- Requirement 5. Light switches, electrical outlets, thermostats and other environmental controls in accessible locations.
- Requirement 6. Reinforced walls for grab bars.
- Requirement 7. Usable kitchens and bathrooms.

Types of Dwellings Covered by the Act

2. What types of housing are covered by the Fair Housing Act’s design and construction requirements?

The Fair Housing Act requires all “covered multifamily dwellings” designed and constructed for first occupancy after March 13, 1991, to be readily accessible to and usable by persons with disabilities. In buildings with four or more dwelling units and at least one elevator, all dwelling units and all public and common use areas are subject to the Act’s design and construction requirements. In buildings with four or more dwelling units and no elevator, all ground floor units and public and common use areas are subject to the Act’s design and construction requirements.

The term “covered multifamily dwelling” is defined by the Act and its implementing regulations and covers many different types of residential buildings and facilities.⁴ Dwellings subject to the Act’s design and construction requirements include condominiums, cooperatives, apartment buildings, vacation and time share units, assisted living facilities, continuing care facilities, nursing homes, public housing developments, HOPE VI projects, projects funded with HOME or other federal funds, transitional housing, single room occupancy units (SROs), shelters designed as a residence for homeless persons, dormitories, hospices, extended stay or residential hotels, and more.

⁴ The federal regulation specifying the types of residential buildings and facilities that are subject to the design and construction requirements of the Act appears at 24 C.F.R. § 100.201.

Housing or some portion of housing covered by the Act's design and construction requirements may be subject to additional accessibility requirements under other laws. Those laws include Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, the Architectural Barriers Act, and state or local laws.

3. What standards are used to determine whether a housing facility that includes short-term residencies is covered by the Act's design and construction requirements?

Whether a housing facility that includes short-term residencies is a "dwelling" under the Act depends on whether the facility is intended to be used as a residence for more than a brief period of time. As a result, the operation of each housing facility needs to be examined carefully to determine whether it is intended to contain dwellings. Factors to be considered in determining whether a facility contains dwellings include, but are not limited to: (1) the length of time persons will stay in the project; (2) whether the rental rate for the unit will be calculated on a daily, weekly, monthly or yearly basis; (3) whether the terms and length of occupancy will be established through a lease or other written agreement; (4) how the property will be described to the public in marketing materials; (5) what amenities will be included inside the unit, including kitchen facilities; (6) whether the resident will possess the right to return to the property; and (7) whether the resident will have anywhere else to return. See Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. 15,740, 15,746-47 (Mar. 23, 2000). See also preamble to the final rule implementing the Fair Housing Amendments Act of 1988, stating that the definition of dwelling is "broad enough to cover each of the types of dwellings enumerated in the proposed rule: mobile home parks, trailer courts, condominiums, cooperatives, and time-sharing properties." 54 Fed. Reg. 3,232, 3,238 (Jan. 23, 1989).

4. Do the Fair Housing Act's design and construction requirements, or any other laws mandating accessible design, apply to detached single family homes?

The Fair Housing Act's design and construction requirements apply only to covered multifamily dwellings -- that is, buildings having four or more dwelling units built for first occupancy after March 13, 1991. This includes both rental and sale units and also attached single family homes when there are four or more dwellings in the building (e.g., condominiums). Detached single family houses as well as duplexes and triplexes are not covered by the Act's design and construction requirements. See 42 U.S.C. §§ 3604(f)(3)(C), (f)(7). Condominiums that are not detached are, however, covered. Preamble to the Guidelines, 56 Fed. Reg. at 9,481.

However, any housing (including single family detached homes) constructed by federal, state, or local government entities or constructed using any federal, state, or local funds may be subject to accessibility requirements under laws other than the Fair Housing Act. These laws -- particularly Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and the Architectural Barriers Act -- have requirements for accessibility that exceed those contained in the Fair Housing Act. In addition, state and local building codes may contain accessibility requirements for detached single family homes and/or other housing. Housing subject to the requirements of more than one federal, state, or local law must comply with the requirements of each such law. Where federal, state, or local laws differ, the more stringent requirements apply. See Preamble to the Guidelines, 56 Fed. Reg. at 9,477. In other words, state or local laws may increase accessibility beyond what is required by federal law but may not decrease the accessibility required by federal law.

5. Do the Act's design and construction requirements apply to a building with four or more sleeping rooms that are each occupied by a separate household who share toilet or kitchen facilities?

Yes. A building with four or more sleeping rooms, each occupied by a separate household who share toilet or kitchen facilities, constitutes a covered multifamily dwelling for purposes of the Act's design and construction requirements. However, HUD has determined that a single family house that will be occupied by four or more persons functioning as one distinct household, such as a "group home" for persons with disabilities, is not considered to be a "covered multifamily dwelling" for purposes of the Act's design and construction requirements, even if it contains four or more sleeping areas with a shared kitchen and bathroom. See Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,746.

6. Are carriage house units -- where a dwelling unit is constructed above a garage -- covered by the Act's design and construction requirements?

If an individual stacked flat unit incorporates parking that serves only that unit, and the dwelling footprint is located directly above and within the footprint of the garage below, the unit is treated like a multistory unit without an elevator. It is, therefore, not covered unless the dwelling unit level is on an accessible route. However, for example, where several flat units are located over a common garage, the units are covered, and the units and common garage must comply with the Act's design and construction requirements whether or not the parking spaces are individually assigned or deeded to a specific unit. See memorandum from HUD General Counsel, Frank Keating, to Gordon Mansfield, Assistant Secretary for FHEO (Dec. 16, 1991), reprinted in the Design Manual at back of Appendix C. See also Design Manual at 1.29.

Example 1: A residential building consists of 4 dwelling units in which each dwelling unit has a 2-car garage and the garage footprint is used as the footprint for the floors of the dwelling unit above. These are carriage houses and are not covered.

Example 2: A residential building consists of 4 dwelling units situated over 4 individual 2-car garages, and the garage footprint serves as the footprint for the dwelling unit above. However, the front of the dwelling unit is accessed at grade from the street and access to the garages is from a lower level at the rear. The dwelling unit level of these units is on an accessible route. Therefore these units do not qualify as carriage houses and must comply with the Act's design and construction requirements.

Ground Floor Dwelling Units

7. Can a non-elevator building have more than one ground floor?

Yes. The Regulations define "ground floor" as "a floor of a building with a building entrance on an accessible route." See 24 C.F.R. § 100.201. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor. See Guidelines, 56 Fed. Reg. at 9,500; Questions and Answers, Q. 6 and 12, 59 Fed. Reg. at 33,364, 33,365.

Example 1: A covered building is located on a slope with the upper story at grade on one side and the lower story at grade on the opposite side. It has entrances on both sides. This building has two ground floors.

Example 2: A 3-story residential building has an adjacent 3-story parking garage, with walkways leading from each floor of the garage to each floor of the residential building. In this case, all three floors of the residential building are covered and must comply with the Act's design and construction requirements because there is a vehicular or pedestrian arrival point on each level of the garage that provides access to the dwelling units on the opposite side. For purposes of the Act, each floor of the residential building is treated as a ground floor. This is true irrespective of whether the residential building or the garage has an elevator.

Single-story and Multistory Dwelling Units

8. Does the Fair Housing Act require townhouses to be accessible?

Yes, if the townhouses are single-story, or multistory with elevators internal to the unit, or multistory and located in a building with one or more elevators. See questions 22-27, below.

A discussion of the application of the Act's design and construction requirements to townhouses appears in the Preamble to the Regulations, 54 Fed. Reg. at 3,243-44, and in the Preamble to the Guidelines, 56 Fed. Reg. at 9,481. See also Questions and Answers, Q. 1, 59 Fed. Reg. at 33,363.

9. May a unit include either a loft or a raised or sunken living room and still comply with the Act's design and construction requirements?

Yes, but with certain restrictions. The Guidelines permit a single-story dwelling unit to have a special design feature such as a loft or an area on a different level within a room, but all portions of the single-story unit except the loft or the sunken or raised area must be on an accessible route. Note, however, that a covered dwelling unit may not have both a loft and a raised or sunken area. A single-story unit may have either a raised or sunken area, but this is limited to an area within a room and not the entire room. Further, the raised or sunken area must not interrupt the required accessible route throughout the rest of the unit. A unit with a loft is treated as a single-story unit. See Guidelines, Requirement 4(2), 56 Fed. Reg. at 9,507; see also Design Manual at 4.5. A loft (defined as an intermediate level between the floor and ceiling of any story, located within a room or rooms of a dwelling) may be provided without an accessible route to the loft. The Guidelines specify that kitchens and all bathrooms, including powder rooms, must be on an accessible route; therefore, a kitchen, bathroom, or powder room may not be located in a loft, or in a raised or sunken area, unless an accessible route is provided to the loft or the raised or sunken area. Because a unit with a loft is a single-story unit, all primary or functional living spaces must be on an accessible route. Secondary living spaces, such as a den, play area, or an additional bedroom, are the only spaces that may be in a loft unless an accessible route is provided to the loft. See Design Manual at 4.7.

10. What constitutes finished living space that would permit a unit to be considered a multistory unit that is not covered under the Act's design and construction requirements?

A multistory dwelling unit is one in which there is finished living space located on one floor and on the floor or floors immediately above or below it. Design Manual at 17, Guidelines, 56 Fed. Reg. at 9,500. An area is considered to have finished living space if it has interior partitions, wall finishes, electrical, heating and cooling systems or other building systems installed and if it complies with local building code requirements for habitable spaces. Habitable space is a space for living, sleeping, eating, or cooking. Habitable space does not include bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas. See Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,762.

11. Do the Act's design and construction requirements apply to multistory townhouses in non-elevator buildings containing four or more dwelling units?

No. The Fair Housing Act applies to all ground floor dwelling units in non-elevator buildings consisting of four or more dwelling units. Multistory townhouses in non-elevator buildings are not considered ground floor dwelling units because the entire dwelling unit is not on the floor that qualifies as a ground floor. Thus, if a building containing four or more dwelling units has only multistory townhouses and does not have an elevator, the Act's design and construction requirements do not apply. However, if the building has four or more dwelling units and includes one or more single story dwelling units, such as a townhouse, villa, or patio apartment, then the Act's requirements apply to the single story dwelling unit(s) and to the public and common use areas. See Preamble to the Regulations, 54 Fed. Reg. at 3,243-44, and Preamble to the Guidelines, 56 Fed. Reg. at 9,481. See also Questions and Answers, Q. 1, 59 Fed. Reg. at 33,363.

Additions

12. Do the Act's design and construction requirements apply to additions of four or more dwelling units or additions of new public and common use areas to existing buildings that were built for first occupancy on or before March 13, 1991?

Yes. When four or more units are built as an addition to a building that was built before the effective date of the Act's design and construction requirements, then the added units must comply with the design and construction requirements of the Act. If any new public and common use spaces are added along with the units, then these spaces are also required to be accessible. However, if only public and common use spaces are added to an existing building not already covered by the Act's design and construction requirements, then those spaces do not need to be made accessible. See Design Manual at 11; Questions and Answers, Q. 4, 59 Fed. Reg. at 33,364.

Example 1: An existing 4-wing residential building with four or more units built in 1985 is partially destroyed by fire such that one complete wing of the building must be torn down and rebuilt. Since the fire destruction necessitates complete rebuilding of this wing, all ground floor units in the new wing or all units in the new wing if the building has an elevator, are covered as an addition and must meet the Act's design and construction requirements.

Example 2: The new owner of a residential building built in 1975 decides to add a clubhouse with meeting rooms for residents. Since the original units were not built after the effective date of the Act, and no new units are being added, the new public and common use areas are not subject to the Act's design and construction requirements, but may be subject to other accessibility laws (e.g., ADA, Section 504).

13. Do additions of units or public and common use areas to buildings with four or more units that were built after March 13, 1991, have to meet the design and construction requirements of the Act?

Yes. Any of the following additions to a building with four or more units designed and constructed after March 13, 1991, must comply with the design and construction requirements of the Act: ground floor units in non-elevator buildings; any units in elevator buildings; and public and common use areas. See Questions and Answers, Q. 4, 59 Fed. Reg. at 33,364.

14. If only dwelling units are added to housing that was designed and constructed for first occupancy on or before March 13, 1991, do the existing public or common use areas have to be retrofitted to comply with the Act's design and construction requirements?

No. Although new covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991 would have to comply with the Act's design and construction requirements, public and common use areas designed and constructed for first occupancy before the effective date do not have to be modified to comply with those requirements. The covered dwelling units must be on an accessible pedestrian route. For example, where an addition consisting of new covered multifamily dwellings shares an inaccessible entrance with an existing building, the inaccessible entrance and route thereto must be made accessible to ensure access to the new units. Furthermore, if any new public and common use spaces are constructed at the same or later time as the new covered dwelling units, then these new public and common use spaces would need to be made accessible. See Questions and Answers, Q. 4(c), 59 Fed. Reg. at 33,364.

Alterations/Renovations

15. Do the Fair Housing Act's design and construction requirements apply to the alteration or renovation of residential properties designed and constructed for first occupancy on or before March 13, 1991?

No. "First occupancy" as defined in the Regulations implementing the Act means a building that has never before been used for any purpose. Therefore, alterations, rehabilitation, or repair of pre-existing residential buildings are not covered because first occupancy occurred before the effective date of the Act's design and construction requirements. See 24 C.F.R. § 100.201; Questions and Answers, Q. 9, 59 Fed. Reg. at 33,365. However, in those cases where the façade on a pre-existing building is maintained, but the building is otherwise destroyed, the new units are subject to the design and construction requirements. See Design Manual at 11.

Example 1: A 2-story residential building built in 1964 containing 20 units is being renovated into 10 large luxury condominium units in 2010. The exterior walls and roof will remain in place, but the interior will be completely rebuilt. This building is not covered because the first occupancy of the building occurred before the effective date of the design and construction requirements of the Act, and the renovations do not constitute construction of a new building.

Example 2: An existing residential building in a historic district is being torn down so that a new 2-story non-elevator residential building with eight dwelling units, four on each floor, may be constructed. The façade of the existing building will be preserved, however, and the new building will be built behind the façade. In this case, the building is a new building designed and constructed for first occupancy after the effective date of the Act's design and construction requirements, and the ground floor units must comply with the Act's design and construction requirements. The preservation of the façade does not change this fact.

16. Do the Fair Housing Act's design and construction requirements apply to the alteration or renovation of nonresidential buildings into residential buildings?

No. First occupancy means a "building that has never before been used for any purpose." The conversion of a nonresidential building into a residential building through alteration or renovation does not cause the building to become a covered multifamily dwelling. This is true even if the original nonresidential building was built after March 13, 1991. This situation needs to be distinguished, however, from additions of covered multifamily dwellings (see questions 12, 13 and 14, above). See 24 C.F.R. § 100.201; Questions and Answers, Q. 4, 8 and 9, 59 Fed. Reg. at 33,364-65.

Example: A warehouse built in 1994 is being rehabilitated into a small condominium residential

building with two stories and a total of 12 dwelling units. This conversion of this building is not covered because at the time of its first occupancy it was not designed and constructed as a covered multifamily dwelling.

Building Separations

17. Does the use of breezeways to separate dwelling units that would otherwise be covered by the Act's design and construction requirements make those units exempt from the Act's requirements?

No. In situations where four or more dwelling units are connected by one or more covered walkways (breezeways), stairs, or other elements that are structurally tied to the main body of a building, the dwelling units are considered to be in a single building. If the building does not contain an elevator, the ground floor units are subject to the Act's design and construction requirements. See Design Manual at 10. If the building contains an elevator, all units are subject to the Act's design and construction requirements.

18. Are dwelling units in one structure that are separated by firewalls treated as separate buildings under the Act?

No. Under the Act, dwelling units built within a single structure, but separated by a firewall, are treated as part of a single building. See Preamble to the Guidelines, 56 Fed. Reg. at 9,480; Design Manual at 10; Questions and Answers, Q. 1(c), 59 Fed. Reg. at 33,363.

Example: Four condominiums were designed and constructed after March 13, 1991, as part of one structure. In accordance with the local building code, the adjoining condominiums are separated by firewalls. Although these condominiums may be considered separate buildings under the local building code, they are considered part of one building for purposes of the Fair Housing Act's design and construction requirements. They must therefore comply with the Act's design and construction requirements.

Dwelling Units Custom-Designed or Pre-Sold Prior to Completion

19. Do the Act's design and construction requirements apply to dwelling units that are sold before construction and/or custom designed during construction for a particular purchaser?

Yes. The mere fact that a covered dwelling unit is sold before the completion of design or construction or is custom designed for a purchaser does not exempt the unit from compliance with the Act's design and construction requirements. The Act's requirements are mandatory, regardless of the ownership status of the individual unit. See Preamble to the Guidelines, 56 Fed. Reg. at 9,481; Questions and Answers, Q. 3(b), 59 Fed. Reg. at 33,364.

20. May the builder, at the purchaser's request, modify a covered dwelling unit that is sold before the completion of design and construction so that the unit will no longer comply with the design and construction requirements?

No. All covered dwelling units are subject to the design and construction requirements of the Act and although a unit may be custom designed to meet a purchaser's wishes, a builder may not build a covered unit that has features that do not comply with the Act. See Preamble to the Guidelines, 56 Fed. Reg. at 9,481.

Subsequent Changes to Accessible Features

21. May owners of covered multifamily buildings designed and constructed in compliance with the Fair Housing Act make subsequent changes to the building so that it no longer meets the Act's requirements?

Original and subsequent owners of covered multifamily buildings that were designed and constructed in compliance with the Fair Housing Act's design and construction requirements must maintain the building's accessible features so that the building continues to meet the Act's requirements.

Buildings with One or More Elevators

22. Does the Fair Housing Act require a townhouse to be accessible if it is located in a building that has an elevator and also has at least four dwelling units?

Yes. If the building containing four or more dwelling units has at least one elevator, then all the dwelling units in the building are covered. This requirement applies to single story and multistory townhouses as follows:

- For single story townhouses in such buildings, the accessible features required by the Act must be provided throughout the entire unit. See Guidelines, Requirement 4(2), 56 Fed. Reg. at 9,507.
- For multistory townhouses located in such buildings, elevator access must be provided to the primary entrance level of the townhouse, and that level must meet the Act's design and construction requirements including providing a usable kitchen and an accessible bathroom or powder room, or just an accessible bathroom if there is both a bathroom and a powder room. However, the powder room in such situations must still have certain accessible features, including a usable door, and an accessible route into the powder room.⁵

23. If a covered building has a building elevator that serves some, but not all, of the units in the building, is it covered by the design and construction requirements? The Act's design and construction requirements apply to all dwelling units in buildings with four or more units if such buildings have one or more elevators. Thus, elevator access must be provided to all units in the building. See 42 U.S.C. § 3604(f)(7). See also Guidelines, Requirement 1(3)(a)(ii), 56 Fed. Reg. at 9,504. The Design Manual at 1.21- 1.22, provides a more detailed discussion of how the Act's design and construction requirements apply with respect to elevator buildings. An exception to this general rule occurs when an elevator is provided only as a means of providing an accessible route to dwelling units on a ground floor that is above grade, below grade, or at grade, and does not provide access to floors that are not ground floors.⁶ In this case, the elevator is not required to serve dwelling units on floors other than ground floors, and the building is not considered to be an elevator building. Under that exception, only the ground floor units are required to meet the requirements of the Guidelines. The Guidelines, Requirement 1(3)(a)(i), 56 Fed. Reg. at 9,504, and the Design Manual at 1.31, illustrate this situation. However, if such an elevator is extended to reach floors other than the ground floor, then all of the units in the

⁵ The powder room must comply with all the provisions except those applying solely to accessible bathrooms set out in Requirements 6 and 7 of the Guidelines, 56 Fed. Reg. at 9,509-15.

⁶ A second exception occurs when the elevator is located completely within one or more units and does not serve other areas of the building. That exception is discussed in more detail in questions 25-27, below.

building must comply with the design and construction requirements and an accessible route must be provided to all units.

Example: A 3-story building has below grade parking and provides an elevator only as a means of access from the below grade parking to the first level of dwelling units, which is located at grade. In this case, the elevator need not provide access to the second and third floors, and the building is not treated as a building with one or more elevators.

24. If the only elevator provided in a covered building is a freight elevator, are all of the units in the building covered by the design and construction requirements of the Act?

Yes. If a freight elevator is provided in a building with four or more dwelling units, even though no passenger elevator is provided, all units must comply with the Act's design and construction requirements.

Example: A 3-story building has a freight elevator from a side entrance where there is a large level pull-up area for moving vans. The freight elevator serves all 3 stories of the building. In this case, the building is treated as a building with one or more elevators, and all floors and all dwelling units on each floor of the building must comply with the Act's design and construction requirements.

25. If one multistory townhouse, in a building with four or more units, contains an internal (i.e., unit-specific) elevator for that occupant's use, and there are no elevators serving other units in the building, must the unit with an elevator meet the Act's design and construction requirements?

Yes. Because the multistory townhouse has an elevator, the building with four or more units in which the townhouse is located is a building that "ha[s] one or more elevators" within the meaning of 42 U.S.C. § 3604(b)(7)(A). The Act's design and construction requirements therefore apply to any townhouse with an internal (i.e., unit-specific) elevator if the townhouse is part of a building containing four or more units. Because the internal elevator serves only the individual unit, however, and there are no other elevators in the building that serve the other units, those multistory townhouses in the building that do not have internal elevators are not required to meet the Act's design and construction requirements. As the Preamble to the Proposed Guidelines, 55 Fed. Reg. 24,370, 24,377 (June 15, 1990), states:

"In both the proposed and final rulemaking, the Department stated that a dwelling unit with two or more floors in a non-elevator building is not a 'covered dwelling unit' even if it has a ground-floor entrance, because the entire dwelling unit is not on the ground floor. (Of course, if the unit had a[n] internal elevator, it would be subject to the Fair Housing Act requirements.)."

See also Preamble to the Regulations, which states, "townhouses consisting of more than one story are covered only if they have elevators and if there are four or more such townhouses."⁷

⁷ See Preamble to the Regulations, 54 Fed. Reg. at 3,244, 3,251; Preamble to the Proposed Guidelines, 55 Fed. Reg. at 24,377; Preamble to the Guidelines, 56 Fed. Reg. at 9,481; Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66. This position also is recognized in other documents determined by HUD to be safe harbors for compliance (see Question 37); e.g., the Appendix to the Code Requirements for Housing Accessibility 2000, states that "a multistory unit in a non-elevator building is not subject to Chapter 4 unless it has an internal elevator. Section 406.7.2 would thus apply to those multistory units with an internal elevator." Appendix § 406.7.2. Likewise, see the Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,740 which noted HUD's agreement with the model code creators that "multistory units with internal elevators" are covered under the FHA. 65 Fed. Reg. at 15,759, 15,767,

26. How do the Act's design and construction requirements apply if the builder of multistory townhouses in a building with four or more units offers an elevator as an option, and one or more of the buyers elects the elevator option?

If the developer of a building with four or more units that includes multistory townhouses offers internal (i.e., unit-specific) elevators in the multistory townhouses as an option, and one or more of the buyers elects to have the elevator installed during construction, then those multistory townhouses with interior elevators are covered, and must comply with the Act's design and construction requirements. In addition, if a multistory townhouse is designed and constructed for later installation of an internal elevator (for example, if it contains an elevator shaft or stacked closets so that the unit was designed for potential installation of an elevator after construction), the multistory townhouse is also covered and must comply with the design and construction requirements. In the case of stacked closets, the closets must have been designed in a manner that will accommodate later installation of an elevator, e.g., inclusion of an elevator pit with a temporary flooring insert, and a raised ceiling to accommodate future elevator cab override. See, e.g., Preamble to the Regulations, 54 Fed. Reg. at 3,244, 3,251; Preamble to the Proposed Guidelines, 55 Fed. Reg. at 24,377; Preamble to the Guidelines, 56 Fed. Reg. at 9,481; Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66.

27. If a building with four or more units contains multistory townhouses with internal elevators or the option for a buyer to add an elevator, must the public and common use areas of the development also comply with the design and construction requirements of the Act?

Yes. Once a building is determined to have at least one covered dwelling unit, that is, either an elevator installed in at least one unit, or at least one unit designed for later installation of an elevator (see question 25, above), the design and construction requirements apply to the public and common use areas of the building and the development in which the building is located. See Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66.

Note: If a builder is designing a development with units that come with a buyer's option to have the builder install an elevator, then the builder must design the elevator optional unit(s) and public and common use areas so that they are compliant with the Act's requirements. Otherwise, the builder must modify the elevator optional unit(s) and public and common use areas to comply with the Act's design and construction requirements once a buyer selects an elevator as an option.

Accessible Routes

28. What is an accessible route?

The Regulations define an accessible route as a continuous unobstructed path connecting accessible elements and spaces in a building or within a site that can be negotiated by a person with a severe disability using a wheelchair, and that is also safe for and usable by people with other disabilities. Interior accessible routes may include corridors, floors, ramps, elevators, and

15,776, and 15,786.

lifts. Exterior accessible routes may include parking access aisles, curb ramps, walks, ramps and lifts. A route that complies with the appropriate requirements of ANSI A117.1-1986, a comparable standard, or Section 5, Requirement 1 of the Guidelines is an accessible route. See 24 C.F.R. § 100.201. Exterior accessible routes must be pedestrian routes that are separate from the road or driveway. For example, it is not acceptable to provide only a road or driveway as an accessible route. However, there is a vehicular route exception to the requirement to provide an accessible pedestrian route that, if met, may apply. See Guidelines, Requirement 1(5), Requirement 2, Chart, Element 1, 56 Fed. Reg. at 9,504, 9,505; Design Manual at 1.9. See also question 33, below.

29. Does the Act permit covered multifamily dwellings to be designed and constructed in a manner that requires persons with disabilities to use an indirect or circuitous route to enter a building or unit or to use locks or call buttons that are not required of other persons?

No. Under the Fair Housing Act, persons with disabilities must be able to enter their dwellings through the same entrance that is used by other persons to enter their dwellings. See Preamble to the Proposed Regulations, 53 Fed. Reg. 44,992, 45,004 (Nov. 7, 1988) (“[h]andicapped persons should be able to enter a newly constructed building through an entrance used by persons who do not have handicaps.”). In addition, routes to the primary entrances of buildings and dwelling units are public and common use areas and must be readily accessible to and usable by people with disabilities.

Therefore, the accessible route cannot be hidden, remote, circuitous or require people with disabilities to travel long distances. Furthermore, the accessible route to the primary entrance must not place special conditions on persons with disabilities -- such as a special key, an attendant, or additional waiting periods that are not imposed on other persons, i.e., including persons who use an inaccessible entrance. This does not preclude the use of special locks or security systems at entrances that are used by all persons to enter the building and/or the dwelling units, and which are used by all residents and members of the public visiting the development; however, such locks and security systems must be accessible. See Design Manual at 1.35; see also 42 U.S.C. § 3604(f)(2).

30. Must an accessible route between public and common use areas and dwelling units be an interior route if the general circulation path is interior?

Yes. The Act permits accessible routes between public and common use areas and dwellings to be interior or exterior. However, if the general circulation path is provided via an interior route, then that path is a public and/or common use area that must be “readily accessible to and usable by” persons with disabilities. See Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05. Persons with disabilities cannot be required to go outside a building to access a public and common use area when persons without disabilities are not required to do the same. The Fair Housing Act prohibits discrimination in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such a dwelling, because of disability. See 42 U.S.C. § 3604(f)(2).

31. Does the Act require accessible routes between buildings that contain only covered multifamily dwelling units?

Walkways between separate buildings containing only covered dwelling units generally are not required to be accessible. However, if the walkways also serve as the accessible route to a public

or common use area, the walkways must be accessible. For example, if a walkway connects separate buildings containing only covered dwelling units and is the only walkway from the buildings to the clubhouse, it must be accessible. See Guidelines, Requirement 2, Chart, Element 1(b), 56 Fed. Reg. at 9,505; Design Manual at 2.16.

32. Must there be accessible pedestrian routes from site arrival points to building entrances serving covered dwelling units?

Yes. Requirements 1 and 2 of the Guidelines require an accessible pedestrian route, within the boundary of the site, from vehicular and pedestrian arrival points to the entrances of covered buildings and dwelling units, except in very limited circumstances where a site is impractical due to steep terrain or unusual site characteristics. The Guidelines outline the tests that must be performed pre-construction during the site design process to determine site impracticality under Requirement 1. If the conditions of these tests are not met, then there must be an accessible entrance on an accessible route from all vehicular and pedestrian arrival points to the entrances of covered buildings and dwelling units. See Guidelines, Requirements 1 and 2, 56 Fed. Reg. at 9,503-05 and the discussions of site impracticality in the Design Manual at Part II, Chapter 1. See also HUD Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code, 70 Fed. Reg. 9,738, 9,742 (Feb. 28, 2005).

33. May a builder use a vehicular route in lieu of an accessible pedestrian route to connect dwelling unit entrances with public and common use areas?

The Act requires an accessible pedestrian route connecting entrances to covered dwelling units with public and common use areas, including the public street or sidewalk, except in rare circumstances that are outside the control of the owner where extreme terrain or impractical site characteristics result in a finished grade exceeding 8.33%, or where physical barriers or legal restrictions that are outside the control of the owner prevent installation of an accessible pedestrian route. In these rare cases, the Guidelines allow access by means of a vehicular route leading from the accessible parking serving the covered dwelling unit to the accessible parking serving the public or common use facility. See Guidelines, Requirements 1 and 2, 56 Fed. Reg. 9,503-05. See also HUD Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code, 70 Fed. Reg. at 9,744.

Example 1: An undisturbed site has slopes of 8.33% or less between planned accessible entrances to covered dwelling units and public use or common use areas and has no legal restrictions or other unique characteristics preventing the construction of accessible routes. For aesthetic reasons, the developer would like to create some hills or decorative berms on the site. Because there are no extreme site conditions (severe terrain or unusual site characteristics such as floodplains), and no legal barriers that prevent installation of an accessible pedestrian route between the covered dwelling units and any planned public use or common use facilities, the developer is obligated to provide accessible pedestrian routes.

Example 2: A developer plans to build several buildings with covered dwelling units clustered in a level area of a site. The site has some undisturbed slopes of 10% and greater. A swimming pool and tennis court will be added on the two opposing sides of the site. The builder plans grading that will result in a finished grade exceeding a slope of 8.33% along the route between the covered dwelling units and the swimming pool and tennis court. There are no physical barriers or legal restrictions (e.g., pipe easement, wildlife habitat, or protected wetlands) outside the control of the owner or builder that prevent the builder from reducing the existing grade to provide an

accessible pedestrian route between the covered dwelling units and the pool and tennis court. Therefore, the developer's building plan would not meet the design and construction requirements of the Act because it is within the owner's control to assure that the final grading falls below 8.33% and meets the slope and other requirements for an accessible pedestrian route. Accessible pedestrian routes from the covered dwelling units to the pool and tennis court must be provided.

34. What is the site impracticality exception to the accessible route requirement of the Fair Housing Act design and construction requirements?

The Regulations provide that all covered multifamily dwellings must be served by an accessible route "unless it is impractical to do so because of the terrain or unusual characteristics of the site." The Regulations place the burden of establishing site impracticality on the persons or entities that designed or constructed the housing. 24 C.F.R. § 100.205(a). See also *Memphis Ctr. for Indep. Living v. Richard & Milton Grant Co.*, No. 01-CV-2069, Fair Housing-Fair Lending Reporter ¶ 16,779, 16,779.4 (W.D. Tenn. Apr. 26, 2004) (order granting partial summary judgment to the United States). The Guidelines set forth two distinct tests which may be used to establish site impracticality: the site analysis test and the individual building test. To claim impracticality, the test must be fully followed and performed at the design stage before construction starts. See Guidelines, Requirement 1, 56 Fed. Reg. at 9,503-04; Questions and Answers, Q. 11, 59 Fed. Reg. at 33,365.

Accessible Entrances

35. How many entrances to a covered multifamily dwelling must be accessible?

The Guidelines require at least one accessible entrance to each covered dwelling unit and to buildings containing covered dwelling units, unless it is impractical to do so as determined by applying one of the site impracticality tests provided in the Guidelines. Additional entrances to a building or to a dwelling also must be accessible if they are public and common use areas, i.e., if they are designed for and used by the public or residents. See 24 C.F.R. § 100.201; Design Manual at 3.10 ("[t]he exterior of the primary entry door of covered dwelling units is part of public and common use spaces, therefore, it must be on an accessible route and be accessible . . ."). It is not acceptable to design and construct a covered multifamily building or dwelling unit in such a manner that persons with disabilities must use a different entrance than the entrance used by persons without disabilities. See Preamble to the Proposed Regulations, 53 Fed. Reg. at 45,004 ("[h]andicapped persons should be able to enter a newly constructed building through an entrance used by persons who do not have handicaps."). See also Design Manual at 1.28 (illustration). Buildings containing covered dwelling units with more than one ground floor must have an accessible entrance on each ground floor connecting to each covered dwelling unit. See 24 C.F.R. § 100.205(a); Guidelines, Requirement 1, 56 Fed. Reg. at 9,503-04.

Example 1: If a secondary entrance at the back of a building containing covered units leads to the clubhouse or parking, both that entrance and the primary entrance at the front of the building must be accessible. See Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05.

Example 2: If a non-elevator building has more than one ground floor (i.e., a building built into a hill with entrances to the first and second stories at grade on opposite sides), then it must have at least one accessible entrance to each floor that connects to the covered dwelling units. See 24 C.F.R. § 200.201 (definition of "ground floor"); Guidelines, Requirement 1(1)(a), 56 Fed. Reg.

at 9,503.

Example 3: If a covered multifamily building has two entrances -- one entrance facing the public street that is inaccessible because it has steps, and a second entrance which is accessible, but it is in the back of the building, the building does not comply with the Act. The entrance facing the street must also be made accessible because it is part of the route to the street and is a public and common use area. This is true even if the residential parking is located in the back of the building across from the back entrance and both entrances can be accessed from inside the building via interior hallways. See question 36, below.

36. Which entrance to a covered dwelling unit or building containing covered dwelling units must be accessible?

The primary entry to dwelling units that have individual exterior entrances or the primary entry to a building containing covered dwelling units must be accessible. This entrance is part of the public and common use areas because it is used by residents, guests and members of the public for the purpose of entering the dwelling or building. It must therefore be readily accessible to and usable by persons with disabilities. Service doors, back doors, and patio doors may serve as additional accessible entrances, but may not serve as the only accessible entrance to buildings or units. See Guidelines, 56 Fed. Reg. at 9,500. See also *United States v. Edward Rose & Sons*, 384 F.3d 258 (6th Cir. 2004), *aff'g*, 246 F. Supp. 2d 744 (E.D. Mich. 2003).

Safe Harbors for Compliance with the Act

37. Are there any “safe harbors” for compliance with the Fair Housing Act?

Yes. In the context of the Act, a safe harbor is an objective and recognized standard, guideline, or code that, if followed without deviation, ensures compliance with the Act’s design and construction requirements. The Act references the American National Standard Institute (“ANSI”) A117.1 standard as a means of complying with the technical provisions in the Act. In determining whether a standard, guideline or code qualifies as a safe harbor, HUD compares it with the Act, HUD’s regulations implementing the Act, the ANSI A117.1-1986 standard (the edition that was in place at the time the Act was passed) and the Guidelines to determine if, taken as a whole, it provides at least the same level of accessibility. HUD currently recognizes ten safe harbors for compliance with the Fair Housing Act’s design and construction requirements, listed below. If a state or locality has adopted one of these safe harbor documents without amendment or deviation, then covered residential buildings that are built to those specifications will be designed and constructed in accordance with the Act as long as the building code official does not waive or incorrectly interpret or apply one or more of those requirements. See Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,756; see also Final Report of HUD Review of the Fair Housing Accessibility Requirements in the 2003 International Building Code, 70 Fed. Reg. at 9,740; Report of HUD Review of the Fair Housing Accessibility Requirements in the 2006 International Building Code, 72 Fed. Reg. 39,432, 39,438 (July 18, 2007), and Design and Construction Requirements, Compliance with ANSI A117.1 Standards, 73 Fed. Reg. 63,610, 63,614 (Oct. 24, 2008).

Those involved in the design and construction of covered multifamily dwellings who claim the protection of a safe harbor must identify which one of the following HUD- recognized safe harbors they relied upon. The ten HUD-recognized safe harbors for compliance with the Act’s design and construction requirements are:

1. HUD's March 6, 1991 Fair Housing Accessibility Guidelines and the June 28, 1994 Supplemental Notice to Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines;
2. ANSI A117.1-1986 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations and the Guidelines;
3. CABO/ANSI A117.1-1992 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations, and the Guidelines;
4. ICC/ANSI A117.1-1998 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations, and the Guidelines;
5. HUD's Fair Housing Act Design Manual published in 1996 and revised in 1998;
6. Code Requirements for Housing Accessibility 2000 (CRHA), approved and published by the International Code Council (ICC), October 2000;
7. International Building Code (IBC) 2000, as amended by the IBC 2001 Supplement to the International Codes;
8. 2003 International Building Code (IBC), with one condition. Effective February 28, 2005, HUD determined that the IBC 2003 is a safe harbor, conditioned upon the International Code Council publishing and distributing the following statement to jurisdictions and past and future purchasers of the 2003 IBC; ICC interprets Section 1104.1, and specifically, the exception to Section 1104.1, to be read together with Section 1107.4, and that the Code requires an accessible pedestrian route from site arrival points to accessible building entrances, unless site impracticality applies. Exception 1 to Section 1107.4 is not applicable to site arrival points for any Type B dwelling units because site impracticality is addressed under Section 1107.7;
9. ICC/ANSI A117.1-2003 - Accessible and Usable Buildings and Facilities, used in conjunction with the Act, HUD's Regulations, and the Guidelines; and
10. 2006 International Building Code, published by ICC, January 2006, with the 2007 erratum (to correct the text missing from Section 1107.7.5), and interpreted in accordance with relevant 2006 IBC Commentary.

HUD's purpose in recognizing a number of safe harbors for compliance with the Fair Housing Act's design and construction requirements is to provide a range of options that, if followed in their entirety without modification or waiver during design and construction, will result in residential buildings that comply with the design and construction requirements of the Fair Housing Act. In the future, HUD may decide to recognize additional safe harbors.

38. May an architect or builder select aspects from among the HUD recognized safe harbors when designing and constructing a single project and retain "safe harbor" status?

No. The ten documents listed above are safe harbors only when used in their entirety, that is, once a specific safe harbor document has been selected, the building in question must comply with all of the provisions in that document that address the Fair Housing Act design and construction requirements to ensure the full benefit of the safe harbor. The benefit of safe harbor status may be lost if, for example, a designer or builder chooses to select provisions from more

than one of the above safe harbor documents, from a variety of sources, or if waivers of provisions are requested and received. If it is shown that the designers and builders departed from the provisions of a safe harbor document, they bear the burden of demonstrating that the dwelling units nonetheless comply with the Act's design and construction requirements.

39. If a property is built to some recognized, comparable, and objective standard other than one of the safe harbors, can it still comply with the Act's design and construction requirements?

Yes. The purpose of the Fair Housing Act Guidelines is "to describe the minimum standards of compliance with the specific accessibility requirements of the Act." Preamble to the Guidelines, 56 Fed. Reg. at 9,476. The Introduction to the Guidelines states, "builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act." Guidelines, 56 Fed. Reg. at 9,499. However, the standard chosen must meet or exceed all of the design and construction requirements specified in the Act and HUD's Regulations, and the builders and developers bear the burden of showing that their standard provides an equivalent or a higher degree of accessibility than every provision of one of the recognized safe harbors. See Design Manual at 13; Preamble to the Guidelines, 56 Fed. Reg. at 9,478-79. While there are some differences among the ten designated safe harbors, there is broad consensus about what is required for accessibility based on the ANSI standards and the safe harbors. These standards result from a process that includes input from a variety of stakeholders, including builders, designers, managers, and disability-rights advocates. Builders and designers should therefore exercise caution before following a standard that contains specifications for an element that do not meet the parallel requirements of the other safe harbors. If the alternative standard is not a generally accepted accessibility standard, it may well not provide the minimum accessibility required by the Act.

40. What constitutes evidence of noncompliance with the Fair Housing Act design and construction requirements?

A case of discrimination may be established by showing that the housing does not meet HUD's Guidelines. This evidence may be rebutted by proof of compliance with a recognized, comparable, objective measure or standard of accessibility. The Ninth Circuit has affirmed this approach in *Nelson v. HUD*, Nos. 07-72803 and 07-73230, 2009 WL 784260, at *2 (9th Cir. Mar. 26, 2009).

41. If I follow my state or local building code, am I safe from liability if a building does not comply with the Fair Housing Act's design and construction requirements?

No. The Fair Housing Act's design and construction requirements are separate from and independent of state and local code requirements. If a state or local code requires, or is interpreted or applied in a manner that requires, less accessibility than the Act's design and construction requirements, the Act's requirements must still be followed. However, state and local governments can assist those involved in building housing subject to the Act's design and construction requirements by incorporating one of the HUD-recognized safe harbors listed above into their building codes without deviation, amendment, or waiver. See 42 U.S.C. § 3604(f)(6)(B). For example, some jurisdictions have already adopted the revised editions of the IBC that are recognized by HUD as safe harbors. See question 39, above.

42. Does the Fair Housing Act require fully accessible units?

No. The Fair Housing Act does not require fully accessible units. For example, the Act's design and construction requirements do not require the installation of a roll-in shower in a dwelling unit in new construction. The Act's design and construction requirements are modest and result in units that look similar to traditional units and are easily adapted by people with disabilities who require features of accessibility not required by the Fair Housing Act.

43. Can a builder meet the Fair Housing Act's design and construction requirements by building a specific number or percentage of fully accessible dwelling units?

No. Congress specifically rejected the approach of requiring only a specific number or percentage of units to be fully accessible. Instead, Congress decided that all covered multifamily dwelling units must comply with the Act's design and construction requirements. See question 1, above, and 42 U.S.C. § 3604(f)(3)(C). Other laws may require developers to construct a specific number or percentage of units with a higher degree of accessibility than the Act's modest requirements. See questions 46, 47 and 48, below. See H.R. Rep. 100-711, at 49 (1988).

Reviews for Compliance

44. Does HUD or DOJ review state and local building codes to determine whether they comply with the Act's accessibility requirements?

No. Although HUD has reviewed several model building codes to determine whether they comply with the Act's design and construction requirements (see question 37, above), neither HUD nor DOJ reviews individual state and local building codes for consistency with the Act.

45. Does HUD or DOJ review site or building plans for compliance with the Act's design and construction requirements?

No. Neither HUD nor DOJ is required by the Act or has the capacity to review or approve builders' plans or issue certifications of compliance with the Act's design and construction requirements. See 42 U.S.C. § 3604(f)(5)(D). The burden of compliance rests with those who design or construct covered multifamily dwellings. See Design Manual at 2. To assist those involved in design or construction to comply with the Act's requirements, HUD provides rulemaking, training and technical assistance on the Act, the Regulations, and the Guidelines. HUD has also recognized ten safe harbors for compliance with the Act's design and construction requirements. See question 37, above. HUD also provides technical guidance through its Fair Housing Accessibility FIRST program, an initiative designed to promote compliance with the Fair Housing Act design and construction requirements. The program offers comprehensive and detailed instruction programs, useful online web resources, and a toll-free information line for technical guidance and support. The Fair Housing Accessibility FIRST website is found at <http://www.fairhousingfirst.org>. DOJ's fair housing website may be accessed at http://www.justice.gov/crt/about/hce/housing_coverage.php.

Buildings Covered by the Act and Other Accessibility Laws or Codes

46. When would both Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Act apply to the same property, and which standard would apply in this situation?

If housing was built for first occupancy after March 13, 1991, and federal financial assistance is involved, both Section 504 and the Fair Housing Act apply. The accessibility standards under both laws must be used. See Preamble to the Guidelines, 56 Fed. Reg. at 9,477-79.

HUD's Section 504 requirements are found in 24 C.F.R. Part 8 and these regulations reference

the Uniform Federal Accessibility Standards (UFAS). Further information about the applicability of Section 504 can be found at <http://www.hud.gov/offices/fheo/disabilities/sect504faq.cfm>. The Uniform Federal Accessibility Standards may be found at <http://www.access-board.gov/ufas/ufas-html/ufas.htm>.

47. What if the Americans with Disabilities Act (ADA) and the Fair Housing Act requirements both apply to the same property?

In those cases where a development is subject to the accessibility requirements of more than one federal law, the accessibility requirements of each law must be met.

There are certain residential properties, or portions of other residential properties, that are covered by both the Fair Housing Act and the ADA. These properties must be designed and built in accordance with the accessibility requirements of both the Fair Housing Act and the ADA. To the extent that the requirements of different federal laws apply to the same feature, the requirements of the law imposing greater accessibility requirements must be met, in terms of both scoping and technical requirements.

In the preamble to its regulation implementing Title III of the ADA, the Department of Justice discussed the relationship between the requirements of the Fair Housing Act and the ADA. The preamble noted that many facilities are mixed-use facilities. For example, a hotel may allow both residential and short term stays. In that case, both the ADA and the Fair Housing Act will apply to the facility. The preamble to the Title III regulation also stated that residential hotels, commonly known as “single room occupancies,” may be subject to Fair Housing Act requirements when operated or used as a residence but they are also considered “places of lodging” subject to the requirements of the ADA when guests are free to use them on a short-term basis. A similar analysis applies with respect to homeless shelters, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. It is important for those involved in the design and construction of such facilities to comply with all applicable accessibility requirements. See 56 Fed. Reg. 35,544, 35,546-47 (July 26, 1991).

Covered multifamily dwellings that are funded or provided through programs operated by or on behalf of state and local entities (e.g., public housing, homeless shelters) are also subject to the requirements of Title II of the ADA.

Under the Fair Housing Act, the common areas of covered multifamily dwellings that qualify as places of public accommodation under the ADA must be designed and constructed in accordance with the ADA Standards for Accessible Design, and the Act’s design and construction requirements. For example, a rental office in a multifamily residential development, a recreational area open to the public, or a convenience store located in that development would be covered by the Act and under Title III of the ADA. See 28 C.F.R. § 36.104. Common use areas for use only by residents and their guests are covered by the Act’s design and construction requirements, but would not be covered by the ADA.

48. What if a state or local building code requires greater accessibility than the Fair Housing Act?

The Fair Housing Act does not reduce the requirements of state or local codes that require greater accessibility than the Act. Thus, the state or local building code's greater accessibility must be provided. However, if a state or local code requires, or is interpreted or applied in a manner that requires, less accessibility than the Act, the Act's requirements must nonetheless be followed. See Final Report of HUD Review of Model Building Codes, 65 Fed. Reg. at 15,753-57. See also Preamble to the Final Rule, Design and Construction Requirements, Compliance with ANSI A117.1 Standards, 73 Fed. Reg. at 63,610.

Accessible Public and Common Use Areas

49. Are rental offices and other public and common use areas required to be accessible under the Fair Housing Act?

Rental offices and other public and common use areas must be accessible if they serve multifamily dwelling units that are subject to the design and construction requirements of the Act. If there are no covered dwelling units on the site, then the public and common use areas of the site are not required to be accessible under the Fair Housing Act. See Questions and Answers, Q. 13, 59 Fed. Reg. at 33,365-66.

It is important to note that Title III of the Americans with Disabilities Act contains accessibility requirements that apply to rental and sales offices and other places of public accommodation that may be associated with housing, even if the housing is not covered by the Fair Housing Act's design and construction requirements. Further, Title II of the ADA applies accessibility requirements to housing and related facilities owned or operated by state or local government entities. In addition, Section 504 of the Rehabilitation Act and the Architectural Barriers Act may also apply to public and common use areas of properties that are designed, constructed, or operated by entities receiving federal financial assistance. The question of whether the accessibility requirements of any of these three federal laws apply to the public or common use areas of a property needs to be considered in addition to whether the Fair Housing Act's design and construction requirements apply.

50. When covered parking is provided as an amenity to covered multifamily housing, what are the accessibility requirements under the Fair Housing Act?

When covered parking is provided, at least 2% of the covered parking serving the covered dwelling units must comply with the accessibility requirements for covered parking and be on an accessible pedestrian route to the covered dwelling units. See Guidelines, Requirement 2, Chart, Element 4, 56 Fed. Reg. at 9,505; Design Manual at 2.23 to 2.24.

51. When a swimming pool is provided on a site with covered multifamily dwellings, what are the design and construction requirements for the pool?

When provided, a swimming pool must be located on an accessible pedestrian route that extends to the pool edge, but the Guidelines do not require that the pool be equipped with special features to offer greater access into the pool than is provided for persons without disabilities. In addition, a door or gate accessing the pool must meet the Act's design and construction requirements and the deck around the pool must be on an accessible route.

If toilet rooms, showers, lockers or other amenities are provided at the pool, these also must be accessible and meet the requirements for accessible public and common use areas. See Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05. It is important to note that the swimming pools and related facilities may be subject to the ADA if persons other than residents and their

guests are allowed to use them.

52. Are garbage dumpsters required to comply with the Act's design and construction requirements?

Garbage dumpsters are public and common use spaces and must be located on accessible pedestrian routes. If an enclosure with a door is built around the dumpster, both the door to the enclosure and the route through this door to the dumpster must meet the provisions of ANSI A117.1-1986 or another safe harbor (when used in accordance with HUD's policy statement, see questions 37-38, above). If parking is provided at the dumpster, accessible parking must also be provided. See Guidelines, Requirement 2, 56 Fed. Reg. at 9,504-05; Design Manual at 2.16 (figure). However, there are no technical specifications for the actual garbage dumpster.

53. When emergency warning systems are installed in the public and common use areas of covered multifamily buildings (for example, in corridors, or breezeways), do the Act's design and construction requirements require such warning systems to include visual alarms?

Yes. The Act requires public and common use areas to be readily accessible to and usable by persons with disabilities. This includes accessibility of building emergency warning systems, when provided. Alarms placed in these areas must have audible and visual features and the Guidelines reference the provisions of ANSI A117.1-1986 Section 4.26 for such alarms. See Guidelines, Requirement 2, Chart, 56 Fed. Reg. at 9,505.

Example: A single user restroom in a rental office must have a visual alarm if the rental office is served by an audible alarm.

54. If there is an emergency warning system installed in the public and common use areas of a covered multifamily building, must there be visual alarms in the interior of dwelling units?

No. The Fair Housing Act's design and construction requirements do not require installation of visual alarms on the interior of dwelling units; however, if there is a building alarm system provided in a public and common use area, then it must be accessible as specified in ANSI A117.1-1986. In addition, the system must have the capability of supporting an audible and visual alarm system in individual units. Note: The International Building Code (IBC) requires that certain multifamily residential buildings that must have a fire alarm also have the capability of supporting visible alarm notification appliances which meet the requirements of ICC/ANSI A117.1. See, e.g., 2006 IBC §§ 907.2.9 and 907.9.1.4.

Enforcement

55. What remedies are typically sought in Fair Housing Act design and construction cases?

Lawsuits brought pursuant to the Fair Housing Act may seek injunctive relief including retrofitting of the property so that the covered dwelling units and public and common use areas meet the Act's requirements, training, education, reporting, future compliance with the Act's requirement, surveying and inspecting retrofits, monetary damages for aggrieved persons, and, in cases brought by the federal government, civil penalties.

56. Who can be sued for violations of the accessibility requirements of the Fair Housing Act?

Any person or entity involved in the noncompliant design and construction of buildings or facilities subject to the Act's design and construction requirements may be held liable for violations of the Act. This includes a person or entity involved in only the design, only the construction, or both the design and construction of covered multifamily housing.

Note that a person or entity that has bought a building or property after it was designed and constructed may be sued when that person or entity is necessary to provide authority to remedy violations or allow access for other necessary reasons such as the identification of any aggrieved persons. This may include subsequent owners, homeowners associations, property management companies or later individual owners or occupants of inaccessible units when such persons must be involved to provide authority to remedy violations.

57. If someone is successfully sued for violating the Act's design and construction requirements, will a court order the building to be torn down and rebuilt?

Courts make rulings in cases based on the facts of each specific situation. Thus, it is difficult to predict what a court might order in a case without knowing the facts. However, extensive modifications including complete retrofits of buildings, units, and public and/or common use areas have been routinely sought and obtained by federal law enforcement agencies and ordered by courts.

58. What recourse is available to a person with a disability or a person associated with a person with a disability who believes that she cannot rent, purchase, or view housing at a particular multifamily property because it is in violation of the design and construction requirements of the Act?

When a person with a disability or a person associated with a person with a disability believes that she has been harmed by a failure to design and construct a unit or property in accordance with the Act's requirements (or any other discriminatory housing practice), she may file a complaint with HUD within one year after the alleged discriminatory practice has occurred or terminated or may file a lawsuit in federal district court within two years after the alleged discriminatory practice has occurred or terminated. See 42 U.S.C. §§ 3610 and 3613. However, persons aggrieved by discriminatory housing practices are encouraged to file a complaint as soon as possible after the discriminatory housing practice occurs or terminates. If a complaint is filed with HUD, HUD will investigate the complaint at no cost to the complainant.

59. At what point do the time frames for a person filing a complaint begin to run?

A person should file a complaint as soon as possible after becoming aware that he or she has been or may be harmed because a property may not be constructed in compliance with the accessibility requirements of the Fair Housing Act. Under the Fair Housing Act, "[a]n aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint" with HUD (see 42 U.S.C. § 3610(a)) and "may commence a civil action [in Court]. . . not later than 2 years after the occurrence or the termination of an alleged discriminatory housing practice." See 42 U.S.C. § 3613(a)(1)(A). While some courts have had differing views, HUD and DOJ believe that the Act is violated, and the one- or two-year statute of limitations begins to run, when an "aggrieved person" is injured as a result of the failure to design and construct housing to be accessible as required by the Act. See 42 U.S.C. § 3602(i). A failure to design and construct a multifamily property in accordance with the Act may cause an injury to a person at any time until the violation is corrected. A person may be injured before,

during or after a sale, rental or occupancy of a dwelling.

In addition, HUD has interpreted the Act to hold that “with respect to the design and construction requirements, complaints can be filed at any time that the building continues to be in noncompliance, because the discriminatory housing practice -- failure to design and construct the building in compliance -- does not terminate” until the building is brought into compliance with the Act and the continuing violation terminates. See Design Manual at 22. Although not all courts have agreed with these interpretations, HUD uses them in determining whether to accept a complaint.

Readers should be aware that as of the date of this joint statement, at least one circuit court has ruled that the Act’s statute of limitations for individual complaints begins to run upon the completion of the covered dwelling, regardless of when the dwelling is actually sold, rented or occupied by a person with a disability.⁸

The time frames for the United States to bring an action under the Fair Housing Act are not addressed in this question and answer.

60. If a designer or builder has built more than one multifamily property in violation of the Act’s design and construction requirements, may he be held liable for violations at all of those properties?

Where a builder, owner, architect or developer of covered multifamily does not comply with the design and construction requirements over a period of time at multiple properties, violations at all of the noncompliant properties may be part of a continuing violation or pattern or practice of illegal discrimination. HUD and DOJ may investigate and take legal action respecting all such properties. An entity involved in the design and construction of an earlier noncompliant property and involved in the design and construction of a later noncompliant property may therefore be subjected to a complaint for participating in a continuing violation or engaging in a pattern or practice of violating the Act.

61. How is a complaint alleging a failure to design and construct multifamily housing filed?

There are several ways that a person may file a complaint with HUD:

- By placing a toll-free call to 1-800-669-9777 or TTY 1-800-927-9275;
- By completing the “on-line” complaint form available on the HUD internet site: <http://www.hud.gov/offices/fheo/index.cfm>; or
- By mailing a completed complaint form or letter to:
Office of Fair Housing and Equal Opportunity, Department of Housing & Urban
Development 451 7th Street, S.W., Room 5204 Washington, DC 20410-2000

Upon request, HUD will provide printed materials in alternate formats (large print, audio tapes, or Braille) and provide complainants with assistance in reading and completing forms.

⁸ See *Garcia v. Brockway*, 526 F.3d 456 (9th Cir. 2008) (en banc). Complaints by persons in states and territories located in the Ninth Circuit -- Washington, Idaho, Montana, Oregon, California, Nevada, Arizona, Alaska, Northern Mariana Islands, Hawaii, and Guam -- may be subject to this ruling if other dwellings designed and/or constructed by the same respondent or defendant were not completed within the limitations period.

The Civil Rights Division of the Department of Justice brings lawsuits in federal courts across the country to end discriminatory practices and to seek monetary and other relief for individuals whose rights under the Fair Housing Act have been violated. The Civil Rights Division initiates lawsuits when it has reason to believe that a person or entity is involved in a “pattern or practice” of discrimination or when there has been a denial of rights to a group of persons that raises an issue of general public importance. The Division also participates as amicus curiae in federal court cases that raise legal questions involving the application and/or interpretation of the Act. To alert DOJ to matters involving a pattern or practice of discrimination, matters involving the denial of rights to groups of persons, or lawsuits raising issues that may be appropriate for amicus participation, contact:

U.S. Department of Justice Civil Rights Division Housing and Civil Enforcement Section - G
St. 950 Pennsylvania Avenue, N.W. Washington, DC 20530

To report an incident of housing discrimination to the U.S. Department of Justice, call the Fair Housing Tip Line: 1-800-896-7743, or e-mail: fairhousing@usdoj.gov.

For more information on the types of housing discrimination cases handled by DOJ, please refer to the DOJ’s Housing and Civil Enforcement Section’s website at http://www.justice.gov/crt/about/hce/housing_coverage.php.

A HUD or DOJ determination not to proceed with a Fair Housing Act matter does not foreclose private plaintiffs from pursuing a private lawsuit. However, litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and DOJ encourage parties to Fair Housing Act disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, such as mediation. HUD attempts to conciliate all Fair Housing Act complaints. In addition, it is DOJ’s policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in unusual circumstances.

Reasonable Accommodations and Reasonable Modifications Under the Act

62. Is any information available concerning reasonable accommodations and reasonable modifications under the Fair Housing Act?

Yes. HUD and DOJ have published joint statements concerning reasonable accommodations and reasonable modifications for persons with disabilities under the Fair Housing Act. See Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Accommodations under the Fair Housing Act (May 17, 2004) and Joint Statement of the Department of Housing and Urban Development and the Department of Justice, Reasonable Modifications under the Fair Housing Act (Mar. 5, 2008), at <http://www.hud.gov/offices/fheo/disabilities/index.cfm> or http://www.justice.gov/crt/about/hce/about_guidance.php.

APPENDIX G

Reproduced from:

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www.hpha.hawaii.gov/documents/HPHA%20SA%202014%20FS_Final.pdf**

4. Notes Receivable for Sale of Kuhio Park Terrace Towers – Federal Low Rent Program

On May 1, 2011, the Authority entered into an Acquisitions Financing Agreement (Agreement) to sell, transfer and convey unto a third party the buildings, structures, equipment, machinery, apparatus, fixtures and fittings (Improvements) of the two high rise buildings known as Kuhio Park Terrace Towers (Project), and for the execution of a ground lease for the land underlying the Improvements (Property), as defined in the Agreement. The ground lease annual rent is one dollar (\$1) and expires on May 11, 2076, with an option for an additional ten (10) years. The buyer, as defined in the Agreement, is required to redevelop the Project to include 555 units, 347 of which will be operated as public housing. In order to assist the buyer in financing the rehabilitation of the Project, the State of Hawaii, Hawaii Housing and Finance Development Corporation issued revenue bonds in the amount of \$66,000,000 for which the proceeds were used to make a mortgage loan to the buyer.

Pursuant to the Agreement, the buyer agreed to pay the Authority an acquisition fee of \$4,665,000 in consideration for acquiring the leasehold interest in the Property and \$45,000,000 for the Improvements, such that the total purchase price was \$49,665,000. Of the total purchase price, \$3,162,943 was paid in cash and the remaining balance of \$46,502,057 was financed pursuant to the Agreement by a note. The note, which is secured by a leasehold mortgage and security agreement, matures in May 2051 and accrues interest at the greater of 4.19 percent per annum or the long term annually compounding applicable federal rate. The note is payable from cash flows from the Property in the amounts and priority set forth in the note, provided that the payments due shall not exceed seventy-five percent (75%) of the borrower's surplus cash, as defined in the note. Additionally, the note is subordinate to the rights of certain financing agreements related to the issuance of revenue bonds for the redevelopment of the Project. Any remaining unpaid principal and accrued interest balance is due and payable on the maturity date of the note.

The sale of the Project is being accounted for under the cost recovery method. Under this method, the gain on sale is deferred until the total payments made by the buyer exceed the cost of the Project. However, a portion of the deferred gain is recognized as income to the extent that the deferred gain exceeds the note receivable from the buyer plus the maximum contingent liability to the Authority for other debt on the Project.

Hawaii Public Housing Authority

Notes to Financial Statements
June 30, 2015

4. Notes Receivable for Sale of Kuhio Park Terrace Towers – Federal Low Rent Program (continued)

During 2015, the interest earned on the note receivable amounted to approximately \$2,033,000 and has been recorded in deferred gain. As of June 30, 2015, the net note receivable, inclusive of all principal, accrued interest and deferred gain related to the Project, is as follows and reflected under the Federal Low Rent Program statement of net position:

Principal and accrued interest	\$ 55,869,575
Deferred gain	<u>(51,052,945)</u>
Net note receivable	<u><u>\$ 4,816,630</u></u>

Additionally, prior to the execution of the ground lease and sale of the Improvements, several planned capital improvements related to the Project had not been completed. As both the Authority and the buyer agreed that the work is necessary, the buyer agreed to complete the work and the Authority agreed to provide the financing. Accordingly, the Authority agreed to loan the buyer up to \$3,900,000 from Public Housing Capital Funds and State of Hawaii Capital Improvement Projects Funds. Payment of principal is deferred until the maturity date, whereupon all principal is due, subject to the availability of surplus cash, as defined in the note agreement. The note does not bear interest unless the borrower defaults upon the maturity date of May 2051. As of June 30, 2015, the Authority loaned the full \$3,900,000 to the buyer, which is included in the accompanying statement of net position under the Federal Low Rent Program.

APPENDIX H

VISITABILITY

- 1. Letter from Pima County Chief Building Official on Benefits of Visitability Mandate297*
- 2. Resolution 28 Passed by 2005 US Conference of Mayors in Support of Visitability298*
- 2. Expanding Implementation of Universal Design and Visitability (AARP Fact Sheet).....299*

Chairwoman Maxine Waters,
Ranking Member Shelley Moore Capito;
House Financial Services Subcommittee on Housing and Community Opportunity
2129 Rayburn House Office Building
Washington DC 20910

Dear Mesdames Waters & Moore Capito:

September 29, 2010

In light of the proposed Inclusive Home Design legislation (H.R. 1408), this letter aims to provide a local testimonial regarding the Pima County local mandate for accessibility experience, builder reactions and the real estate environment.

Pima County, AZ, a community of approximately one million inhabitants adopted an inclusive home design ordinance in February, 2002 to provide basic accessibility for homes built within the unincorporated areas of the jurisdiction. The main impetus for these requirements was twofold: to provide disabled persons with basic accessibility to homes when visiting neighbors, friends or family, as well as to provide homes with basic infrastructure in the event a resident experienced a disability. In fact, approximately 70 percent of people experience a temporary, if not permanent, disability at some point in their life and so providing basic housing which can accommodate these circumstances can save the community extensive expenses associated with retrofitting existing non-accessible building stock.

The Pima County Inclusive Home Design Ordinance requires basic accessibility for single family dwellings to include a zero-step entrance, an accessible route through the first floor of the dwelling incorporating clear width and approaches, adjusted heights for electrical devices, compliant door hardware, and bathroom blocking for future installation of grab bars. Since the effective date of the ordinance, over 21,000 homes have been built in the County incorporating the above features.

While these requirements were at first resisted by builders based on the fact that they would require costly changes to conventional design and construction practices, it became evident that with appropriate planning, the construction could result in no additional cost. Indeed, the jurisdiction no longer receives builder complaints regarding the ordinance and the ordinance has been so well incorporated into the building safety plan review and inspection processes that there is no additional cost to the County to enforce its requirements.

From a real estate perspective, homes built to this standard are deemed more marketable, but even more importantly; the accessible features of these homes remain unnoticed when toured by individuals not seeking accessibility. One of the initial concerns of the ordinance implementation was that it would result in homes appearing institutional in nature. This has not occurred within Pima County. As such it would seem reasonable to anticipate like benefits and impacts by extending these requirements on a national level in line with the proposed Inclusive Home Design Act.

Sincerely,



Yves Khawam, PhD
Pima County Chief Building Official



VISITABILITY OPPORTUNITIES FOR PEOPLE WITH DISABILITIES

Resolution 28: Passed by the U.S. Conference of Mayors June 2005

WHEREAS, the U.S. 2000 Census indicates that approximately 20 percent of the American population has a disability, and that by 2030 there will be over 70 million seniors; and

WHEREAS, with the population aging and the likelihood of developing a disability or other mobility limitations increasing with age, the growth in the number of people with disabilities can be expected to rise dramatically; and

WHEREAS, only five percent of new single family homes and town homes built with federal assistance require any access features that make it possible for people with disabilities to live or visit; and

WHEREAS, visitability is an inclusive design approach that integrates a limited number of crucial accessibility features, such as no step entries, doorways with 32' clear passage space and at least one accessible bathroom into newly built homes; and

WHEREAS, visitability features would allow seniors to stay in their homes longer and people with disabilities to visit friends and families in their homes, thereby enhancing quality of life and community living; and

WHEREAS, numerous municipalities and states across the country, including Chicago, Naperville, Bolingbrook and Urbana, Illinois; Atlanta, Georgia; Pima County, Arizona, Vermont, Texas and Kansas have adopted visitability standards in their building codes; and

NOW, THEREFORE, BE IT RESOLVED that the U.S. Conference of Mayors strongly supports the independence of persons with disabilities and seniors by promoting the concept of including visitability standards to increase access to the homes of friends, family and neighbors; and

BE IT FURTHER RESOLVED, that the U.S. Conference of Mayors supports local and state initiatives to promote visitable housing.

Expanding Implementation of Universal Design and Visitability Features in the Housing Stock

As adults age and their physical abilities change, they may face environmental impediments in their home that make living independently a challenge. Universal design and visitability features can improve residential safety and usability for older adults and people with disabilities.

Universal Design and Visitability Defined

Universal design and visitability are strategies aimed at improving the safety and utility of housing for all people, including older adults and people with disabilities. Although closely related, universal design and visitability differ in their origins and scope.

Universal design

Universal design is an approach to designing products and environments to be appropriate for all people, including those with physical, cognitive, or sensory impairments. This concept emerged in the mid-1980s and is defined by the Center for Universal Design as “the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.”¹ Within a residential setting, examples of universal design features include a blended step-free entrance route, multiple countertop heights, wide doorways, lever faucets, and a curbless shower with handheld adjustable shower head.² Rather than being geared solely to older adults and people with disabilities, universal design features are intended to have general utility and market appeal.

Visitability

Visitability, a concept formalized in 1987 by the advocacy group Concrete Change, is based on the principle that all new homes should include a few basic features that make them accessible to people regardless of their physical abilities.³ Unlike universal design, which can be applied to a variety of products and environments, the notion of visitability is focused exclusively on housing.

A visitable home has a main level that is easy to enter and exit. The three key features are at least one zero-step entrance; wide interior doors; and at least a half bathroom on a home’s main level. Advocates for visitability have limited its focus to these three features because of concerns that a more extensive list of features may not be as readily adopted by builders and purchasers of new homes, nor as feasible for legislative and code requirements.⁴ But because of this limited focus, a visitable home may not be as accommodating as one that incorporates more comprehensive universal design elements.

Why Are Universal Design and Visitability Important?

According to an AARP survey, almost 90 percent of adults 50+ prefer to stay in their homes as long as possible.⁵ While the homes of many older adults have some

accessibility features, a great number lack features that make a home universally designed or even visitable.

Homes that lack important ease of use and convenience features may make it difficult for older residents to bathe, use stairs, enter and exit, or meet other daily needs. Such barriers may precipitate an unwanted or premature move to an assisted living facility or to an institutionalized setting, which can limit independence and be emotionally taxing and financially burdensome. Through home modifications (i.e., custom remodeling for a specific resident's needs) or the adoption of improved standards in new home construction, universal design and visitability features can enhance functionality, independence, and safety for everyone. These features thus enable older adults to age in place and allow people with disabilities to remain involved in family and community life.

Several federal laws require that certain residential settings meet a set of accessibility requirements. The Architectural Barriers Act of 1968 mandates that any facility designed, built, altered, or leased with federal funds, including federally subsidized housing, must meet accessibility criteria outlined in what are now the Uniform Federal Accessibility Standards (UFAS).⁶ Federally subsidized housing must also meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973. Additionally, the Fair Housing Act requires that any residential building with four or more units constructed after 1991 must meet seven design and construction criteria, including accessible entrances and common areas and wide doors and hallways.⁷

As important as they are, these laws do not generally require single-family homes (which make up more than 70 percent of the nation's housing stock), duplexes, triplexes, or multistory townhouse

buildings without an elevator to meet any accessibility standards.^{8,9} Policies that encourage the adoption of universal design features and visitability criteria can ensure that homes not covered by existing federal law are accessible to people of all physical abilities. It is especially important to incorporate these features into new residential developments, because modifying existing homes is typically more expensive.¹⁰

Strategies to Promote Universal Design Features and Visitability Criteria

With the exception of homes covered under the federal laws described above, few residential building codes and ordinances address accessibility issues. Several different mandatory and voluntary approaches to promoting the inclusion of universal design and visitability features in new and existing homes are discussed below. It should be noted that little research into the relative effectiveness of these programs has been conducted to date, although some housing practitioners and advocates favor mandatory requirements as a way to increase the adoption of universal design and visitability features in homes.

Mandatory Universal Design or Visitability Requirements

At the federal level, there is the potential to implement policies that require visitability or universal design criteria in new homes. In March 2009, the Inclusive Home Design Act was introduced in Congress. The bill proposes to increase the number of homes usable by people with disabilities by requiring that all newly built single-family homes and townhouses receiving federal funds meet primary visitability standards.¹¹

Several states and localities already require that homes not covered by the Fair Housing Act meet a set of universal design or visitability criteria. As with the

proposed federal legislation, most mandatory requirements are limited to residential projects built with government assistance. For example, the cities of Atlanta, Austin, and San Antonio adopted visitability ordinances for newly built single-family homes and duplexes that receive tax credits, city loans, land grants, or impact fee waivers. Each of these cities has produced several thousand houses that comply with their requirements.¹²

A few states and localities mandate that universal design or visitability features be included even in newly built homes that do not benefit from government assistance. Pima County and Tucson, Arizona, and Bolingbrook, Illinois, require that all new single-family homes meet basic visitability criteria, and these cities have produced a total of nearly 30,000 visitable units since enacting their respective laws.¹³

States and localities can also mandate that builders offer universal design features as options in new homes. As part of California's Health and Safety Code, builders must provide a checklist of universal design "add-on options" to potential homebuyers, enabling buyers to choose accessibility features for their home. Although this policy is not thought to have had a particularly significant impact in California, requiring builders to offer universal design features to buyers, and monitoring compliance, does allow consumers to directly influence the accessibility of their new home as it is being built.

Voluntary and Incentive-Based Programs

Some states and localities have developed voluntary programs to encourage developers or homeowners to adopt universal design features and visitability criteria in homes. These programs often offer financial incentives, building certification, streamlined permitting, or fee waivers to those who participate. Yet some housing advocates express concern that

incentive-based programs are not readily adopted by consumers or developers and thus do not significantly increase the stock of homes that are safe and convenient for all people.

Recognizing that accessibility improvements can be expensive, some states designate tax credits or create deferred loan programs to assist with home modifications for existing homes. In Georgia, for example, a tax credit of \$500 is available to people with disabilities to cover the costs of a no-step entrance, wide doorways, reinforced bathroom walls, and accessible light switches in the construction of new single-family homes.¹⁴

At the local level, jurisdictions can waive construction permit fees or streamline the permitting process for homes with accessibility features, helping to reduce overall building costs. For example, in 1999, officials in Freehold Borough, New Jersey, passed an ordinance to waive building permit fees for ramps and other universal design features in residential units.¹⁵ In Austin, the S.M.A.R.T. Housing Initiative uses expedited review and fee waivers to incentivize the production of single-family and multifamily affordable homes. To participate in the S.M.A.R.T. program, builders and developers must build homes that meet visitability criteria put in place by an Austin ordinance enacted in 1998.¹⁶

Voluntary certificate programs are another incentive-based approach that "brands" homes meeting accessibility standards under a recognizable label, marketing them for prospective homebuyers or tenants. For example, Johnson County, Iowa, operates the Homes for Life program, a two-tiered certification program that rates homes as either "Level I - Visit-ability" or "Level II - Live-ability," depending on which accessibility features are incorporated into home construction.¹⁷ Such certificate programs

could benefit from coordinated outreach and education efforts to increase awareness of the advantages associated with accessibility features in homes.

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¹² Maisel, Jordana, et al. *Increasing Home Access*.

¹³ Ibid.

¹⁴ Kochera, Andrew. *Accessibility and Visitability Features in Single-Family Homes: A Review of State and Local Activity*. Washington, DC: AARP, March 2002.

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¹⁶ Maisel, Jordana, et al. *Increasing Home Access*.

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⁹ See www.fairhousingfirst.org for more information on the types of buildings covered by the Fair Housing Act.

¹⁰ Maisel, Jordana, et al. *Increasing Home Access*.

¹¹ GovTrack.us (database of federal legislation). 2009. "H.R. 1408—111th Congress: Inclusive Home Design Act of 2009." Retrieved Nov 9, 2009, from www.govtrack.us/congress/bill.xpd?bill=h111-1408.